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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1953

No. 44

AVONDALE MARINE WAYS, INC., PETITIONER,

vs.

JOSEPH H. HENDERSON, DEPUTY COMMISSIONER, MRS. VIOLA CAMPBELL, VELMAR LEE CAMPBELL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 24, 1953
CERTIORARI GRANTED JUNE 8, 1953

SUPREME COURT OF THE UNITED STATE

OCTOBER TERM, 1953

No. 44

AVONDALE MARINE WAYS, INC., PETITIONE

vs.

JOSEPH H. HENDERSON, DEPUTY COMMISSIONE MRS. VIOLA CAMPBELL, VELMAR LEE CAM BELL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEA FOR THE FIFTH CIRCUIT

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[fol. 1]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14055

AVONDALE MARINE WAYS, INC., Appellant,

versus

JOSEPH H. HENDERSON, Deputy Commissioner, et al., Appellees.

No. 14056

AVONDALE MARINE WAYS, INC., Appellant,

versus

JOSEPH H. HENDERSON, Deputy Commissioner, et al., Appellees.

JOINT STIPULATION & ORDER TO CONSOLIDATE THIS CASE NO. 14,056 FOR PURPOSE OF BRIEFING & HEARING, BUT THAT A SEPARATE JUDGMENT BE ENTERED IN EACH RECORD.—Filed May 9, 1952.

Since the above cases present the same questions of law and similar questions of fact, and since they were consolidated for hearing before the United States District [fol. 2] Court and were disposed of by the District Court in one opinion, it is stipulated and agreed by and between the parties hereto, by and through their respective attorneys of record, that with the permission of this Honorable Court, which is hereby prayed for, the above numbered and entitled two cases shall be consolidated for briefing and hearing in this Court, and that the record in only one case, that of Avondale Marine Ways, Inc. vs. Joseph H. Henderson, Deputy Commissioner, et al., Circuit Court of Appeal Docket No. 14055, shall be printed; and it is further agreed that separate judgments be rendered in each of the above numbered and entitled two cases based upon the Court's find-

ings of fact as applied to each case and the law applicable thereto.

Thus Done and Signed in Duplicate at New Orleans, this 25th day of April, 1952, A. D.

John W. Sims, Counsel for Avondale Marine Ways, Inc., Appellant, G. Harrison Scott, Counsel for Joseph H. Henderson, Deputy Commissioner, et al., Appellees.

ORDER—May 9, 1952

It Is Ordered By The Court, that the above-numbered and entitled two causes be consolidated for briefing and hearing; that the record in only one cause, that of Avondale Marine Ways, Inc. vs. Joseph H. Henderson, Deputy Commissioner, et al., Circuit Court of Appeal Docket No. 14055, shall be printed; and that separate judgments be rendered [fol. 3] in each of the above-numbered and entitled two causes based upon the findings of fact as applicable in each of these respective causes and the law applicable thereto.

Wayne G. Borah, Judge, United States Circuit Court of Appeals for the Fifth Circuit.

May 9th, 1952.

[Caption omitted]

[fol. 4] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

COMPLAINT FOR INJUNCTION—Filed January 11, 1952

The complaint of Avondale Marine Ways, Inc., respectfully alleges that:

I

Plaintiff is a corporation organized and existing under the laws of the State of Louisiana, authorized to do and doing business in the State of Louisiana, having its principal place of business in the City of New Orleans, State of Louisiana.

II

This complaint is filed for the purpose of reviewing and setting aside as not in accordance with the law or the evidence, the order, findings of fact and awards of defendant Joseph H. Henderson, Deputy Commissioner, United States Department of Labor, Bureau of Employees' Compensation, Seventh Compensation District, dated December 14, 1951, directing plaintiff to pay to the other defendants herein the benefits on account of the death of Arthur Campbell in amounts provided in the Longshoremen's and Harbor Workers' Compensation Act, as amended.

III

All defendants, Mrs. Viola Campbell, Velmar Lee Camp-
[fol. 5] bell, Thelma Campbell, Rona May Campbell, Arthur Campbell, Jr., Roger Campbell, Clarence Rundles Campbell, Edna Ann Campbell, Lionel Foster Campbell, and Brenda Joyce Campbell, reside within the jurisdiction of this proceeding is vested in this Honorable Court by Section 21 (B) of the Longshoremen's and Harbor Workers' Compensation Act, as amended (U.S.C.A., Title 33, Section 921 (B)).

IV

As will appear from the copy of the proceedings at the hearing held before Joseph H. Henderson on Wednesday, November 28, 1951, at Room 813, Masonic Temple Building, New Orleans, Louisiana, at 9:30 A. M., a copy of which proceedings is attached hereto and made a part hereof and marked Plaintiff Exhibit "A", the decedent, Arthur Campbell, was killed on July 20, 1951 in an explosion while working in the employ of plaintiff on a marine railway operated by plaintiff.

V

Thereafter, the said Joseph H. Henderson, Deputy Commissioner, over plaintiffs' objection, made a compensation order, findings and awards of compensation in which he awarded compensation to his co-defendants herein under the Longshoremen's and Harbor Workers' Compensation Act, a true copy of which compensation order, findings and

awards is attached hereto and made a part hereof and marked Plaintiff Exhibit "B".

VI

In and by said compensation order and awards, the said [fol. 6] Deputy Commissioner found that at the time the said Arthur Campbell received the injuries resulting in his death, he was employed by plaintiff and engaged with other employees in cleaning the inside of a barge, which barge was on the cradle of a marine railway of the plaintiff, "the cradle being on wheels which were on the rails (tracks) of the marine railway, and the rails being attached to cross timbers and said timbers resting upon the ground, * * *."

VII

The Longshoremen's and Harbor Workers' Compensation Act provides in Section 3 thereof (Title 33 U.S.C.A., Section 903) that:

"(a) Compensation shall be payable under this Chapter in respect of disability or death of an employee but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any drydock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by state law. * * *"

VIII

The Louisiana Workmen's Compensation Act (R. S. 23:1035) provides, in part, as follows:

"The provisions of this Chapter shall also apply to every person performing services arising out of and incidental to his employment in the course of his employer's trade, business, or occupation in the following hazardous trades, businesses and occupations:

[fol. 7] The operation, construction, repairs, removal, maintenance and demolition of railways and railroads, vessels, boats, and other water crafts, * * *"

IX

As will clearly appear from Plaintiff Exhibits "A" and "B" annexed hereto, the death of the insured did not occur upon the navigable waters of the United States (including any drydock), but occurred in the course of employment on land and is within the said Louisiana Workmen's Compensation Act.

X

As will further appear from the provisions of the Louisiana Workmen's Compensation Act hereinabove quoted, valid provision is made by the State law for compensation to the survivors of the said Arthur Campbell and, in fact, plaintiff has been and is at the present time making voluntary compensation payments under the State act to defendants, Mrs. Viola Campbell, Velmar Lee Campbell, Thelma Campbell, Rona May Campbell, Arthur Campbell, Jr., Roger Campbell, Clarence Rundles Campbell, Edna Ann Campbell, Lionel Foster Campbell and Brenda Joyce Campbell, survivors of Arthur Campbell, in accordance with the provisions of the Louisiana Workmen's Compensation Law.

XI

Plaintiff avers, therefore, that the compensation order and awards so made by the defendant, Joseph H. Hender- [fol. 8] son, Deputy Commissioner, are not in accordance with the law and the evidence and are invalid for the reason that the accident involved did not take place upon the navigable waters of the United States (including any drydock), but occurred on land and that the Deputy Commissioner was, therefore, without jurisdiction or authority to make or render any compensation order or awards.

XII

Plaintiff has no adequate remedy at law herein and has no means of obtaining redress of the wrong complained of except through injunction proceedings, mandatory or otherwise, to annul and set aside the compensation order and awards of compensation complained of herein.

Wherefore, plaintiff respectfully prays that:

(a) A mandatory injunction be granted by and issued from this Honorable Court to said defendant, Joseph H. Henderson, Deputy Commissioner, ordering and directing him to recall and set aside his awards, compensation order and findings of fact of December 14, 1951, and to render an order denying the claim of defendants, Mrs. Viola Campbell, Velmar Lee Campbell, Thelma Campbell, Rona May Campbell, Arthur Campbell, Jr., Roger Campbell, Clarence Randles Campbell, Edna Ann Campbell, Lionel Foster Campbell and Brenda Joyce Campbell, and each of them, for compensation benefits under the Longshoremen's and Harbor Workers' Compensation Act.

(b) Plaintiff have judgment that said awards and order of December 14, 1951 be annulled and set aside;

[fol. 9] (c) Plaintiff have and obtain such other orders, decrees and relief as equity, law and the nature of the case may require.

(S.) Ashton Phelps, Tenth Floor United Fruit Building, New Orleans, Louisiana. (S.) John W. Sims, Tenth Floor United Fruit Building, New Orleans, Louisiana.

Of Counsel: Mendes & Mount, 27 William Street, New York 5, New York. Phelps, Dunbar, Marks & Claverie, Tenth Floor United Fruit Building, New Orleans 12, Louisiana.

[fol. 10] EXHIBIT TO COMPLAINT

COMPENSATION ORDER, AWARD OF COMPENSATION

U. S. DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION
SEVENTH COMPENSATION DISTRICT

Case No. 434-178

In the Matter of the Claim for Compensation Under the Longshoremen's and Harbor Workers' Compensation Act.

MRS. VIOLA CAMPBELL, (WIDOW) VELMAR LEE CAMPBELL, Thelma Campbell, Rona May Campbell, Arthur Campbell, Jr., Roger Campbell, Clarence Rundles Campbell, Edna Ann Campbell, Lionel Foster Campbell, Brenda Joyce Campbell, (Minor children), Claimants, (Arthur Campbell, deceased employee),

against

AVONDALE MARINE WAYS, INC., Employer, Self-Insurer.

Such investigation in respect to the above entitled claim having been made as is considered necessary, and
A hearing having been duly held in conformity with law,
The Deputy Commissioner makes the following

Findings of Fact:

1. That on the 20th day of July, 1951, Arthur Campbell, hereinafter called the decedent, was in the employ of the employer above named, at the place known as Avondale [fol. 11] (near New Orleans, Louisiana), in the State of Louisiana, in the Seventh Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by itself as a self-insurer; that on said day the decedent herein, while performing service for the employer upon a marine railway, sustained accidental injury arising out of and in the course of his employment and resulting in his disability and death while he was employed as a laborer

on a barge known as the "Walter Buss", said barge being then on the employer's marine railway which extended from shore into the waters of the Mississippi River, at the establishment of said employer, at the place known as Avondale (near New Orleans, Louisiana), in the State of Louisiana, when, while cleaning inside a tank of said barge while the barge was on the cradle of the marine railway, the cradle being on wheels which were on the rails (tracks) of the marine railway, and the rails being attached to cross timbers and said timbers resting upon the ground, and the marine railway extending down into the waters of said River, a flash explosion occurred in the tank in which the decedent was cleaning, resulting in the decedent being severely burned and caused his (instant) death;

2. That the death of the decedent occurred on July 20, 1951, as a result of said injury;

3. That written notice of said injury and death was not given within thirty days but that the employer had immediate knowledge of said injury and death and that the employer has not been prejudiced by such failure to give such written notice;

[fol. 12] 4. That the average weekly wage of the decedent, at the time of his injury (on July 20, 1951), amounted to the sum of $52.50 per week; that full wages were paid for the day of injury (death occurred same day);

5. That the total amount of the funeral expenses for preparation and burial of the body of the decedent, which was handled by Young's Mortuary Service, Inc., 1029 Jackson Avenue, New Orleans, Louisiana, amounted to the sum of $400.00 which amount has been paid in full to said Young's Mortuary Service, Inc., by Avondale Marine Ways, Inc.; that the reasonable amount of funeral expenses for which said employer is liable is the sum of $400.00 (maximum under the said Act, as amended), and the funeral expenses for which said employer is liable is approved by the Deputy Commissioner in the sum of $400.00;

6. That Mrs. Viola Campbell, one of the claimants herein, whose present address is Box 41, Killona, Louisiana, was born September 25, 1915, and is the surviving wife of the decedent and was living with and dependent for support upon him at the time of his injury and death, and is entitled to a death benefit of $18.38 per week (35% of $52.50, maxi-

mum average weekly wage—Section 9 (b) and (e) of the said Act as amended by the Amendment to said Act of June 24, 1948), beginning as of date July 21, 1951;

7. That death benefits have accrued to the said Mrs. Viola Campbell during the period July 21, 1951 to December 7, 1951, inclusive, a period of 20 weeks, in the sum of $367.60;

[fol. 13] 8. That Velmar Lee Campbell, one of the claimants herein, residing with her mother, Mrs. Viola Campbell, at Killona, Louisiana, was born October 19, 1934, and is a surviving child of the decedent, and is entitled to a death benefit of $1.84666 per week (3.5185% of $52.50), beginning as of date July 21, 1951;

9. That death benefits have accrued to the said Velmar Lee Campbell during the period July 21, 1951 to December 7, 1951, inclusive, a period of 20 weeks, in the sum of $36.9332;

10. That Thelma Campbell, one of the claimants herein, residing with her mother, Mrs. Viola Campbell, at Killona, Louisiana, was born July 28, 1936, and is a surviving child of the decedent, and is entitled to a death benefit of $1.84666 per week (3.5185% of $52.50), beginning as of date July 21, 1951;

11. That death benefits have accrued to the said Thelma Campbell during the period July 21, 1951 to December 7, 1951, inclusive, a period of 20 weeks, in the sum of $36.9332;

12. That Rona May Campbell, one of the claimants herein, residing with her mother, Mrs. Viola Campbell, at Killona, Louisiana, was born May 6, 1938, and is a surviving child of the decedent, and is entitled to a death benefit of $1.84666 per week (3.5185% of $52.50), beginning as of date July 21, 1951;

13. That death benefits have accrued to the said Rona May Campbell during the period July 21, 1951 to December [fol. 14] 7, 1951, inclusive, a period of 20 weeks, in the sum of $36.9332;

14. That Arthur Campbell, Jr., one of the claimants herein, residing with his mother, Mrs. Viola Campbell, at Killona, Louisiana, was born November 27, 1939, and is a surviving child of the decedent, and is entitled to a death benefit of $1.84666 per week (3.5185% of $52.50), beginning as of date July 21, 1951;

15. That death benefits have accrued to the said Arthur Campbell, Jr., during the period July 21, 1951 to December 7, 1951, inclusive, a period of 20 weeks, in the sum of $36.9332;

16. That Roger Campbell, one of the claimants herein, residing with his mother, Mrs. Viola Campbell, at Killona, Louisiana, was born February 16, 1942, and is a surviving child of the decedent, and is entitled to a death benefit of $1.84666 per week (3.5185% of $52.50), beginning as of date July 21, 1951;

17. That death benefits have accrued to the said Roger Campbell during the period July 21, 1951 to December 7, 1951, inclusive, a period of 20 weeks, in the sum of $36.9332;

18. That Clarence Rundles Campbell, one of the claimants herein, residing with his mother, Mrs. Viola Campbell, at Killona, Louisiana, was born November 26, 1944, and is a surviving child of the decedent, and is entitled to a death benefit of $1.84666 per week (3.5185% of $52.50), beginning as of date July 21, 1951;

[fol. 15] 19. That death benefits have accrued to the said Clarence Rundles Campbell during the period July 21, 1951 to December 7, 1951, inclusive, a period of 20 weeks, in the sum of $36.9332;

20. That Edna Ann Campbell, one of the claimants herein, residing with her mother, Mrs. Viola Campbell, at Killona, Louisiana was born August 16, 1946 and is a surviving child of the decedent, and is entitled to a death benefit of $1.84666 per week (3.5185% of $52.50), beginning as of date July 21, 1951;

21. That death benefits have accrued to the said Edna Ann Campbell during the period July 21, 1951 to December 7, 1951, inclusive, a period of 20 weeks, in the sum of $36.9332;

22. That Lionel Foster Campbell, one of the claimants herein, residing with his mother, Mrs. Viola Campbell, at Killona, Louisiana, was born August 27, 1948, and is a surviving child of the decedent, and is entitled to a death benefit of $1.84666 per week (3.5185% of $52.50), beginning as of date July 21, 1951;

23. That death benefits have accrued to the said Lionel Foster Campbell during the period July 21, 1951 to De-

cember 7, 1951, inclusive, a period of 20 weeks, in the sum of $36.9332;

24. That Brenda Joyce Campbell, one of the claimants herein, residing with her mother, Mrs. Viola Campbell, at Killona, Louisiana, was born April 17, 1950, and is a surviving child of the decedent, and is entitled to a death benefit of $1.84666 per week (3.5185% of $52.50), beginning as of [fol. 16] date July 21, 1951;

25. That death benefits have accrued to the said Brenda Joyce Campbell during the period July 21, 1951, to December 7, 1951, inclusive, a period of 20 weeks, in the sum of $36.9332;

26. That the employer, self-insurer, named above has paid $540.00 as death benefits to and on behalf of the claimants above named under the Louisiana Workmen's Compensation Act, and credit for said payment is allowed on the award of compensation made herein; that the said employer has also paid $400.00 on the funeral expenses which is the maximum amount allowed under the provisions of the Longshoremen's and Harbor Workers' Compensation Act under the Amendment to said Act of June 24, 1948;

27. That it is the judgment of the Deputy Commissioner that the compensation (death benefits) awarded herein to the minor children named above shall be paid direct to their mother, Mrs. Viola Campbell, as natural guardian of said children, to be used by her for the support of said children (equally to each child), and disbursed in her discretion for such purpose, subject to the further order of the Deputy Commissioner if used otherwise.

Upon the foregoing findings of fact the Deputy Commissioner makes the following

[fol. 17] Award:

That the employer, Avondale Marine Ways, Inc., Avondale, Louisiana (P.O. Box 1030, New Orleans 8, Louisiana), shall pay funeral expenses and death benefits as follows:

The sum of $400.00 as funeral expenses, however, as said amount, as funeral expenses, has already been paid, there is now nothing remaining to be paid by said employer on said expenses, and the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as Amended,

with respect to the funeral expenses in this case, have been satisfied;

That said employer shall pay to Mrs. Viola Campbell, surviving wife of the decedent, for and on her behalf and to her for and on behalf of the minor children Velmar Lee Campbell, Thelma Campbell, Rona May Campbell, Arthur Campbell, Jr., Roger Campbell, Clarence Rundles Campbell, Edna Ann Campbell, Lionel Foster Campbell and Brenda Joyce Campbell, the sum of $700.00, forthwith, for 20 weeks death benefits that have accrued to each of them during the period July 21, 1951 to December 7, 1951, inclusive, less the sum of $540.00 already heretofore paid, and

Beginning December 8, 1951, shall continue to pay death benefits to the said Mrs. Viola Campbell for herself individually and to her for and on behalf of the minor children Velma Lee Campbell, Thelma Campbell, Rona May Campbell, Arthur Campbell, Jr., Roger Campbell, Clarence Rundles Campbell, Edna Ann Campbell, Lionel Foster [fol. 18] Campbell, and Brenda Joyce Campbell, as mother and natural guardian of said children, fortnightly, at the rate of $35.00 per week ($70.00 each two weeks).

The Awards for death benefits made herein to the claimants above named are subject to the applicable limitations of Sections 2 (14) and 9 (b) of the Longshoremen's and Harbor Workers' Compensation Act, as amended by the Amendment to said Act of June 24, 1948.

Given under my hand at New Orleans, Louisiana, this 14th day of December, 1951.

Jos. H. Henderson, Deputy Commissioner, Seventh Compensation District.

JHH/d

IN UNITED STATES DISTRICT COURT.

MOTION TO CONSOLIDATE—Filed February 12, 1952

On motion of Joseph H. Henderson, Deputy Commissioner, United States Department of Labor, Bureau of Employees Compensation, Seventh District, through his counsel, G. Harrison Scott, Assistant United States Attorney for the Eastern District of Louisiana, and on suggesting to this Honorable Court that the two above-

captioned causes should be consolidated as these two causes [fol. 19] involve common questions of law and fact:

It is ordered that the foregoing causes be consolidated as these two causes involve common questions of law and fact.

New Orleans, Louisiana, February 12, 1952.

(S.) J. Skelly Wright, United States District Judge.

(S.) G. Harrison Scott, Assistant United States Attorney.

IN UNITED STATES DISTRICT COURT

MOTION FOR SUMMARY JUDGMENT—Filed February 12, 1952

On motion of Joseph H. Henderson, Deputy Commissioner, United States Department of Labor, Bureau of Employees' Compensation, Seventh District, through G. Harrison Scott, Assistant United States Attorney for the Eastern District of Louisiana, and on suggesting to this Honorable Court that defendant Joseph H. Henderson was made a party to these proceedings together with defendants herein, as a result of his order and findings of fact, dated December 14, 1951, directing plaintiff to pay to the other defendants herein the benefits accruing unto them under the Longshoremen's and Harbor Workers' Compensation Act, as amended, as a result of the injuries and deaths sustained by Arthur Campbell and Joseph D'Arensbourg;

[fol. 20] And on suggesting to this Honorable Court that a hearing was held by the said Joseph H. Henderson, Deputy Commissioner, on Wednesday, November 28, 1951, at 9:30 A.M., in the matter involving Viola Campbell, et al., Claimants, vs. Avondale Marine Ways, Inc., Employer and Self-Insurer, at which time the parties interested therein, whose names appear in the transcript of said testimony taken thereon, a transcript of which is attached hereto and made a part hereof, together with the exhibits marked Claimant 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and defendants D-1, D-2, D-3, which said exhibits are attached to the aforementioned transcript and made a part hereof;

And on suggesting to this Honorable Court that a hearing was held by the said Joseph H. Henderson, Deputy

Commissioner, on Tuesday, November 27, 1951, at 9:30 A.M., in the matter involving Enese Coleman D'Arensbourg, et al., Claimants, vs. Avondale Marine Ways, Inc., Employer and Self-Insurer, at which time the parties interested therein, whose names appear in the transcript of said testimony taken thereon, a transcript of which is attached hereto and made a part hereof, together with the exhibits marked Claimants A, B, C, D, E, and Defendants D-1, D-2, D-3;

And on suggesting to this Honorable Court that the aforementioned award by the Deputy Commissioner for the Seventh Compensation District is disputed and controverted solely on the grounds that the decedents aforementioned met injury and death while working on a barge on a marine railway, which said railway does not come within the purview of the Longshoremen's and Harbor Workers' Com-
[fol. 21] pensation Act, Section 3 thereof, Title 37 USCA, Section 903, which is as follows:

"(a) Compensation shall be payable under this chapter in respect to disability or death of an employee but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through Workmen's Compensation proceedings may not validly be provided by said law * * *"

but rather that said injuries and deaths come within the scope and purview of the Louisiana Workmen's Compensation Act (L.S.A.R.S. 23: 1035), which reads in part as follows:

"The provisions of this chapter shall also apply to every person performing services arising at and incidental to his employment in the course of his employer's trade, business or occupation in the following hazardous trades, businesses and occupations:

The operation, construction, repairs, removal, maintenance and demolition of railways and railroads, vessels, boats, and other water crafts, * * *"

And on suggesting to this Honorable Court that the sole and only dispute with the Deputy Commissioner's award

is based upon plaintiff's contention that "the death of the insured did not occur upon the navigable waters of the United States (including any dry dock), but occurred in the course of employment on land and is within the said Louisiana Compensation Act."

[fol. 22] And on suggesting to this Honorable Court that this issue has been ruled on specifically and categorically in favor of the Deputy Commissioner in the Circuit Court of Appeals, Fifth Circuit, case of Continental Casualty Company v. Lawson, 64 F. (2) 802, and also in the case of Maryland Casualty Company, et al., v. Lawson, Deputy Commissioner, Fifth Circuit, 64 F. (2) 802, in which the Court said:

"Technically, a dry dock is a watertight basin which after pumping out allows examination and work upon the bottom of a vessel. A graving dock, except for details of construction, is the same. A floating dock receives a vessel when the dock is submerged, after which the watertight compartments of the dock are pumped out and the buoyancy of the dock raises the vessel. A marine railway is an inclined structure at the water's edge which extends below the water. It carries a cradle which moves on rollers or wheels. The cradle runs below the water and receives a vessel which is then hauled out. Bradford, Glossary of Sea Terms, "Dry Dock," Railway."

"(3) In enacting the Longshoremen's and Harbor Workers' Compensation Act it was clearly the intention of Congress to give the same rights and remedies to those employed in work of a maritime nature as are enjoyed by other workers under the provisions of state workmen's compensation acts. The act is to be liberally construed to effect its purpose. Baltimore & Philadelphia Steamboat Co. v. Norton, 284 U. S. 408, 409, 52 S. Ct. 187, 76 L. Ed. 366.

"(4,5) In construing the act we are not bound by technical definitions but must interpret it by giving to the [fol. 23] words used their ordinary meaning. Courts of admiralty may take notice of terms in general use in maritime affairs. Brown v. Piper, 91 U. S. 37, 23 L. Ed. 200. In nautical parlance "dry dock," --floating dock" and "marine railway" are interchangeable terms. Necessarily, all are located on navigable waters and used for exactly

the same purposes, i.e., to raise a ship out of the water to permit examination and repairs to her hull which are impossible while she is afloat. A ship's master speaks of "dry docking" his vessel regardless of which method is to be used. That the words have a common meaning is illustrated by this case. Although operating a marine railway, appellant calls itself a dry dock.

"There are few dry docks, technically considered, in the United States. Floating docks or marine railways or both are to be found at every seaport. It must be presumed that Congress intended to protect the great majority of laborers employed on floating docks and marine railways as well as the comparatively few workmen employed on what are to be technically considered dry docks. We entertain no doubt that intending the law to cover "any dry Dock" Congress intended to include marine railways. Cf. International Stevedoring Co. v. Harverty, 272 U. S. 50, 47 S. Ct. 19, 71 L. Ed. 157, and Warner v. Foltra, 293 U. S. 155, 55 S. Ct. 46, 79 L. Ed. 254.

"We do not find the authorities relied upon by appellants persuasive and prefer to adhere to our former ruling in Continental Casualty Co. v. Lawson, supra."

[fol. 24] Defendant moves this Honorable Court for a summary judgment in favor of defendant, Joseph H. Henderson, Deputy Commissioner, and against plaintiff, Avondale Marine Ways, Inc., dismissing its claim.

(S.) G. Harrison Scott, Assistant United States Attorney, Attorney for Defendant, 237 Post Office Building, New Orleans, Louisiana.

Notice of Motion and Certificate of Service omitted in printing.

[fol. 25] IN UNITED STATES DISTRICT COURT

EXHIBIT "B" TO COMPLAINT

Official Report of Proceedings Before Joseph H. Henderson, Deputy Commissioner of the Seventh Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation.

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Case No. 434-178

Viola Campbell (Widow), et al., claimant,

vs.

Avondale Marine Ways, Inc., employer, self-insurer

Place: New Orleans, Louisiana,
Date: November 28, 1951.

U. S. Department of Labor
Bureau of Employees' Compensation

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

[fol. 26] Case No. 434-178

Viola Campbell (Widow), and Velmar Lee, Thelma, Rona May, Arthur, Roger, Clarence Rundles, Edna Ann, Lionell Foster and Brenda Joyce Campbell (minor children) claimants,

vs.

Avondale Marine Ways, Inc., employer and self-insurer
Room 813, Masonic Temple Building, New Orleans, Louisiana.

Wednesday, November 28, 1951.
Met, pursuant to notice, at 9:30 a.m.

Before: Joseph H. Henderson, deputy commissioner of the Seventh Compensation District.

Appearances:

For the Claimant:

Viola Campbell, Killona, Louisiana.

For the Defendant:

Mendes & Mount, 27 William Street, New York, and Phelps Dunbar Marks & Claverie (By John W. Sims).

PROCEEDINGS

The Deputy Commissioner:

Gentlemen, shall we get started, please?

[fol. 27] The hearing at this time scheduled to begin at 9:30 o'clock this morning, November 28, 1951, in Room 813, of the Masonic Temple Building, at 333 St. Charles Street, New Orleans, Louisiana, is in connection with a claim for compensation (death benefits) filed by Viola Campbell, for and on behalf of herself, and by her for and on behalf of nine minor children, and against Avondale Marine Ways, Incorporated, employer, self-insurer, under the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

We have been waiting for Viola Campbell, the widow in this case, to show up, and she has just shown up at this moment. We will, therefore, proceed with the hearing the best we can.

Viola Campbell is sitting at the hearing table this moment, and I desire to ask her if she has a lawyer or an attorney to represent her at this hearing here this morning.

Viola, do you have a lawyer or attorney to represent you here this morning?

The Claimant:

No, sir.

The Deputy Commissioner:

Are you willing for this hearing to proceed—

The Claimant:

Yes, sir.

[fol. 28] The Deputy Commissioner:

(Continuing) —to a conclusion without your having an attorney or lawyer to represent you?

The Claimant:

Yes.

The Deputy Commissioner:

I would also like to ask Viola whether or not she has any witnesses to testify in connection with her side of the case here this morning.

The Claimant:

No, sir.

The Deputy Commissioner:

Do you have any witnesses to testify in connection with your side of the case here today, Viola?

The Claimant:

No, sir.

The Deputy Commissioner:

I noticed a woman came in with you a moment ago.

The Claimant:

Yes, sir.

The Deputy Commissioner:

Who is that woman?

The Claimant:

My sister.

[fol. 29] The Deputy Commissioner:

Your sister?

The Claimant:

Yes.

The Deputy Commissioner:

I make the further observation that Mr. E. V. Moore, of Avondale Marine Ways, Incorporated, is present in the hearing room at this time, and that attorney John W. Sims is also present in this hearing room at this time, and that Mr. Sims is representing the Avondale Marine Ways, Incorporated, in this hearing here today.

For the record I'd like to ask Mr. Moore, who is connected with Avondale Marine Ways, Incorporated, if that is correct?

Mr. Moore:

Yes, sir, that is correct.

The Deputy Commissioner:

To briefly repeat again, this hearing at this time, which is in Room 813 of the Masonic Temple Building, at 333 St. Charles Street, New Orleans, Louisiana, is in connection with the claim for compensation (death benefits) filed by Viola Campbell, for and on behalf of herself, and by her for and on behalf of nine minor children, namely, Velmar Lee Campbell, Thelma Campbell, Rona May Campbell, Arthur Campbell, Jr., Rogert Campbell, Clarence Rundles Campbell, Edna Ann Campbell, Lionell Foster Campbell, and Brenda Joyce Campbell, as widow and minor children, respectively, of Arthur Campbell, Jr., the deceased em-[fol. 30] ployee, and against Avondale Marine Ways, Incorporated, employer, self-insurer, under the provisions of the Longshoremen's and Harbor Workers' Compensation Act as amended.

The employer timely reported to the Deputy Commissioner that the employee, Arthur Campbell, Jr., was killed as a result of an explosion which occurred on drilling barge "Walter Russ," which was at that time on the marine railway of the employer, at the employer's establishment

at Avondale, Louisiana, and that said explosion, which resulted in this employee's death, occurred on July 20, 1951.

On August 30, 1951, a claim for compensation (death benefits) was filed with the Deputy Commissioner by Viola Campbell, for and on behalf of herself as widow of the deceased employee, and by her for and on behalf of nine minor children of the deceased employee, whose names were given on the claim as Velmar Lee Campbell, Thelma Campbell, Rona May Campbell, Arthur Campbell, Jr., Roger Campbell, Clarence Rundles Campbell, Edna Ann Campbell, Lionell Foster Campbell and Brenda Joyce Campbell. A copy of said claim was sent to the employer, self-insurer, by registered mail, for answer. The employer's answer was received, in which certain facts were admitted and denied.

It is requested that the interested parties or their representatives state for the record the facts which they admit and accept, without controversy, for purposes of this hearing, and also to state the issue or issues upon which they desire to be heard. Off the record.

[fol. 31] (Discussion off the record.)

The Deputy Commissioner:

On the record.

STATEMENT OF FACTS

Mr. Sims:

Mr. Commissioner, the employer, self-insurer, Avondale Marine Ways, Incorporated, admits and accepts the following statement of facts in this case without controversy:

1. That on the 20th day of July, 1951, Arthur Campbell, Jr., hereinafter called the decedent, was in the employ of Avondale Marine Ways, Incorporated, at a place known as Avondale, which is about eleven miles upstream of the Mississippi River from the City of New Orleans, Louisiana, in the State of Louisiana, in the Seventh Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said act was insured by itself as a self-insurer; that on said day the decedent herein while performing services for the employer sustained accidental injury as a result of a flash

explosion (cause unknown) arising out of and in the course of his employment as a laborer, and resulting in his disability and death;

2. That at the time of said explosion decedent was cleaning in a tank of the drill barge known as "Walter Russ," which barge was not owned by the employer. The said explosion occurred in said tank and seriously burned the decedent and caused his instant death;

[fol. 32] 3. That at the time of said explosion, accidental injury and death, the said barge "Walter Russ" was then on the cradle of a marine railway at the establishment of said employer, at a place known as Avondale, in the State of Louisiana, the said place of Avondale being about eleven miles upstream of the Mississippi River from the City of New Orleans, in the State of Louisiana; the said marine railway extended from the land on shore down into the water of the Mississippi River, and the cradle, which is on wheels, rests upon the tracks of the marine railway, and when a vessel is to be pulled from the water, the cradle on the marine railway is lowered into the water, and the vessel is floated onto and rests on the cradle. Several hours prior to said explosion, the barge "Walter Russ" was floated onto the cradle of the submerged tracks of the marine railway, and then said cradle, with the barge resting thereon, was then hauled out of the water and brought to rest on the marine railway above the ground on which it rested at a point some 400 feet from the water's edge, and it was there that the explosion on said barge occurred, which resulted in the death of the decedent; the decedent was inside the said tank at the time of the explosion.

4. That the death of the decedent occurred on July 20, 1951, as a result of said injury;

5. That wherein notice of said injury and death was not given within 30 days, that the employer had immediate knowledge of said injury and death, and that the employer had not been prejudiced by such failure to give such written notice;

[fol. 33] 6. That the employer, Avondale Marine Ways, Incorporated, is and has been prior to July 1951 a corporation organized and existing under and by virtue of the laws of the State of Louisiana. The employer has been and was

on July 20, 1951, engaged in the business of marine construction and repair at its plant located at the place known as Avondale, Louisiana, and the Parish of Jefferson, State of Louisiana, and in connection with its plant at the place of Avondale, Louisiana, it owned and operated a shipyard and the marine railway upon which the barge "Walter Russ" had been hauled ashore prior to the time of the aforementioned explosion and resulting injury and death. The Employer, Avondale Marine Ways, Incorporated, was, on July 20, 1951, an authorized self-insurer under the provisions of the Longshoremen's and Harbor Workers' Compensation Act;

7. That the average weekly wage of the decedent, at the time of his injury, amounted to the sum of $52.50 per week; that full wages were paid for the day of injury and death;

8. That the total amount of the funeral expenses for the preparation and burial of the body of the decedent, which was handled by Young's Mortuary Service, Incorporated, address 1028 Jackson Avenue, New Orleans, Louisiana, amounted to the sum of $400.00, and said amount has been paid in full to said Young's Mortuary Service, Incorporated, by Avondale Marine Ways, Incorporated;

9. That Mrs. Viola Campbell, one of the claimants herein, whose present address is Box 41, Killona, Louisiana, was born September 25, 1915, and is the surviving wife of the [fol. 34] decedent, and was living with and dependent upon for support, upon him at the time of his injury and death;

10. That Velmar Lee Campbell, one of the claimants herein, residing with her mother, Mrs. Viola Campbell, at Killona, Louisiana, was born October 19, 1934, and is a surviving child of the decedent;

11. That Thelma Campbell, one of the claimants herein, residing with her mother, Mrs. Viola Campbell, at Killona, Louisiana, was born July 28, 1936, and is a surviving child of the decedent;

12. That Rona May Campbell, one of the claimants herein, residing with her mother, Mrs. Viola Campbell, at Killona, Louisiana, was born May 6, 1938, and is a surviving child of the decedent;

13. That Arthur Campbell, Jr., one of the claimants herein, residing with his mother, Mrs. Viola Campbell, at

Killona, Louisiana, was born November 27, 1939, and is a surviving child of the decedent;

14. That Roger Campbell, one of the claimants herein, residing with his mother, Mrs. Viola Campbell, at Killona, Louisiana, was born February 16, 1942, and is a surviving child of the decedent;

15. That Clarence Bundles Campbell, one of the claimants herein, residing with his mother, Mrs. Viola Campbell, at Killona, Louisiana, was born November 26, 1944, and is a surviving child of the decedent;

[fol. 35] 16. That Edna Ann Campbell, one of the claimants herein, residing with her mother, Mrs. Viola Campbell, at Killona, Louisiana, was born August 16, 1946, and is a surviving child of the decedent;

17. That Lionell Foster Campbell, one of the claimants herein, residing with his mother, Mrs. Viola Campbell, at Killona, Louisiana, was born August 27, 1948, and is a surviving child of the decedent;

18. That Brenda Joyce Campbell, one of the claimants herein, residing with her mother, Mrs. Viola Campbell, at Killona, Louisiana, was born April 17, 1950, and is a surviving child of the decedent;

19. That the employer, self-insurer named above, has paid $540.00 as death benefits to and on behalf of the claimants named herein, under the Louisiana Workmen's Compensation Act, such payments to be credited on any final award under the Longshoremen's and Harbor Workers' Compensation Act.

Mr. Commissioner, those are the facts which the employer, self-insurer, is willing to admit, and which said employer does now admit and accept without controversy in this case.

The Deputy Commissioner:

Mrs. Viola Campbell, you have read the statement of facts which Mr. Sims, Attorney Sims, for the Avondale Marine Ways, Incorporated, has stated into the record that the employer is willing to admit and accept without controversy, and which the employer does now admit and accept without controversy in your case.

[fol. 36] Did you clearly understand the facts which he read into the record a moment ago?

The Claimant:

Yes, sir.

The Deputy Commissioner:

Do you accept and admit those same enumerated facts without controversy on behalf of yourself and the nine minor children which he named?

The Claimant:

Yes, sir.

The Deputy Commissioner:

Excuse me. I have a long distance phone call. We'll take a ten-minute recess.

(Short recess.)

The Deputy Commissioner:

In connection with the claimant's side of the case, I would like to have in the record, as a matter of record, certified copy of this widow's marriage certificate, and certified copies of the birth certificates of each child. She has presented originals of those certificates, and I have had one of the ladies in my office make copies of them, and that lady that made the copies has certified them to be true and correct. If counsel for the defendant has no objections, I'd like to get those into the record just as a matter of record.

Mr. Sims:

No objection.

[fol. 37] The Deputy Commissioner:

Particularly as to the fact of marriage and particularly as to the children being children of the decedent, and the dates of their birth.

Mr. Sims:

No objection.

The Deputy Commissioner:

On behalf of Mrs. Viola Campbell, the widow in this case and the minor children previously referred to, there is of-

fered, introduced and filed into evidence at this time a copy of this widow's marriage certificate, showing her marriage to Arthur Campbell, Jr., on May 22, 1934, the said copy being certified by Grace L. Ryan, who is one of the employees of my office.

I also offer, introduce and file into evidence, on behalf of the same claimants, certified copy of the birth record of the child, Velmar Lee Campbell, which shows this child was born on October 19, 1934.

I also offer into evidence certified copy of the birth record of the child, Thelma Campbell, which shows that she was born on July 28, 1936.

I also offer, introduce and file into evidence on behalf of the said claimants, certified copy of the birth record of the child Rona May Campbell, which shows that she was born on May 6, 1938.

I also offer, introduce and file into evidence on behalf of these claimants, the birth record of the child Arthur Campbell, Jr., which shows that this child was born on November 27, 1939.

[fol. 38] I also offer, introduce and file into evidence, birth record of the child Roger Campbell, which shows this child was born on February 16, 1942.

I also offer, introduce and file into evidence, birth record of the child Clarence Rundles Campbell, which shows that this child was born on November 26, 1944.

I also offer, introduce and file into evidence, birth record of the child Edna Ann Campbell, which shows that this child was born August 16, 1946.

I also offer, introduce and file into evidence, the birth record of the child Lionell Foster Campbell, which shows that this child was born August 27, 1949.

I also offer, introduce and file into evidence on behalf of said claimants, the birth record of the child Brenda Joyce Campbell, which shows this child was born April 17, 1950.

The birth certificates of these children was reflected by the certified copies just offered, introduced and filed in evidence, shows that they are children of the decedent and of the widow in this case.

Mr. Sims, you have previously stated you have no objection to receiving these papers into evidence, is that correct?

Mr. Sims:

None whatsoever.

[fol. 39] The Deputy Commissioner:

The same are received into evidence, and the Court reporter is now authorized to identify the same in the order in which they were introduced as claimant's Exhibits 1 through 10, inclusive.

(The documents in question were received in evidence and were marked respectively Claimants' Exhibits 1 through 10, inclusive, and will be found attached to the back of the original transcript of the proceedings in this case.)

The Deputy Commissioner:

So far as I observe at the moment, Mr. Sims, that seems to be all the evidence that perhaps may be admitted by both sides into the record in this case without controversy.

Mr. Sims:

Off the record, Mr. Henderson?

The Deputy Commissioner:

Off the record.

(Discussion off the record.)

The Deputy Commissioner:

That being true, it will be in order at this time for counsel for the employer, Avondale Marine Ways, Incorporated, to state the issue or issues upon which he desires to be heard in this case.

Mr. Sims:

Avondale Marine Ways, Incorporated, denies that the circumstances under which the death of Arthur Campbell, [fol. 40] Jr., occurred conferred any jurisdiction under the Longshoremen's and Harbor Workers' Compensation Act, and Avondale Marine Ways, Incorporated, contends that the death is subject to compensation and jurisdiction under the Louisiana Workmen's Compensation Act.

The Deputy Commissioner:

Are those all the issues of the defendant, Mr. Sims?

Mr. Sims:

Yes.

The Deputy Commissioner:

It will next be in order for the widow in this case to state the issue or issues upon which she desires to be heard on her own behalf and on behalf of the nine minor children involved in this case. This widow is of the colored race and not being represented by counsel, I desire to tell at this point that I cannot represent her as her attorney in this hearing. I have to try the case and then render a decision, so I can't be her attorney.

The Claimant:

Yes, sir,

The Deputy Commissioner:

But I can assist her in any way that she makes it possible within the authority that I have under the law to see that evidence or witnesses that she may have to testify for and on her behalf, and on behalf of the children, are given an opportunity to present such evidence as they may have, or witnesses to testify as they may produce, and to advise her, [fol. 41] within the authority which I have under the Act of the procedure which is customarily followed in this kind of case. What she may desire to do with reference to admitting into evidence in this case here today any evidence that was developed in the hearing held yesterday in the case of Joseph D'Arensbourg, deceased employee of Avondale Marine Ways, Incorporated, whose death occurred under the same conditions and on the same date and at the same place as the death of Arthur Campbell, Jr., would be for the widow to determine. We all know that Mrs. Viola Campbell was not present at the hearing held in the D'Arensbourg case yesterday, and Mrs. Viola Campbell had no representative at the hearing yesterday in the D'Arensbourg case.

It was mentioned by counsel for the defendant in the hearing held yesterday in the D'Arensbourg case that the defendant would agree, and did agree, for the testimony of the witnesses Henry Z. Carter and Arthur A. Grant to be made a part of the record in this hearing here today without either of those gentlemen being present; both of those gentlemen stated yesterday that their testimony, as they gave it, equally applied to the D'Arensbourg case and the Arthur Campbell case.

The testimony that was given by those two gentlemen yesterday, of course, was stenographically reported by the official Court reporter, and we do not have at this time a transcription of those stenographic notes. Therefore, we do not have at the present time a typewritten copy of the testimony that was given by Mr. Carter and Mr. Grant. Therefore, I am not in a position at this time to show a [fol. 42] typewritten copy of the transcript of the testimony of those two gentlemen to Mrs. Viola Campbell, the widow in this hearing here today, for her to see and consider whether she is willing to admit their testimony in the case yesterday to become a part of the record in her case here today; neither am I in a position to tell her word for word the testimony given by Mr. Carter and Mr. Grant yesterday. About all that I can tell her would be that the testimony of those two gentlemen yesterday, in the D'Arensbourg case, did not in the least or in any way change the fact that the death of Joseph D'Arensbourg, and the death of Arthur Campbell, Jr., occurred in the tank of the barge "Walter Russ," and that the barge, at the time of the explosion and death of these two men, was then on the cradle of the marine railway, and the cradle was resting on the tracks of the marine railway, and the tracks were fastened or anchored to timbers, and the timbers rested upon the ground; all of which means that the death of both of these men occurred upon the marine railway. Now, that's about the only extent that I'm able to tell her with reference to the testimony of those two gentlemen yesterday.

Mr. Carter and Mr. Grant's testimony was with respect to the marine railway, its location, and the location of the barge on the marine railway, and its distance from the

water's edge at the time of the explosion which caused your husband's death. I'm now speaking to Mrs. Viola Campbell.

It also referred to the history of this marine railway, and the use to which it has been put, and the use to which it is being made in the course of the business of Avondale Marine Ways, Incorporated.

[fol. 43] Now, if Mrs. Viola Campbell desires to see the testimony of those two gentlemen, namely, Mr. Carter and Mr. Grant, as it will appear in the transcript of the testimony in the D'Arensbourg case before she makes up her mind or decides to admit the testimony of those two gentlemen in the record of her case here today, I will grant her that opportunity, which would mean that this hearing would have to be continued to a later time, at least until the official transcription of the hearing in the D'Arensbourg case yesterday has been delivered to the Deputy Commissioner by the Court reporter. Even after she should review the testimony of Mr. Carter and Mr. Grant in the D'Arensbourg case yesterday, if she should decline to admit their testimony into the record of her case here today without those gentlemen appearing and testifying over again, I would have to respect her wishes in that connection. If Mrs. Viola Campbell, from what I have told her here this morning, in the last few minutes, is willing for the testimony of Mr. Carter and Mr. Grant, as it will appear in the transcript of the testimony in the D'Arensbourg case, to become and be made a part of the record in Mrs. Viola Campbell's case here today, that will be agreeable with me.

The Claimant:

I have no objection.

The Deputy Commissioner:

I beg your pardon?

The Claimant:

I have no objection.

[fol. 44] The Deputy Commissioner:

You have no objections to what?

The Claimant:

For—if you want their claim to be, you know—what Mr. Carter—the testimony—

The Deputy Commissioner:

You mean, if I understand you correctly, Viola, you have no objections to the testimony given by Mr. Carter—

The Claimant:

Yes, sir.

The Deputy Commissioner:

(Continuing)—yesterday to be made a part of the record in your case here today?

The Claimant:

Yes, sir.

The Deputy Commissioner:

Is that what you mean?

The Claimant:

Yes, sir.

The Deputy Commissioner:

And if I also understand you correctly, you have no objections to the testimony of Mr. Grant, who testified yesterday in the D'Arensbourg case, to be made a part of the record in your hearing here today?

[fol. 45] The Claimant:

No, sir, I don't.

The Deputy Commissioner:

Is that correct?

The Claimant:

Yes.

The Deputy Commissioner:

Is that what you mean?

The Claimant:

Yes.

The Deputy Commissioner:

In other words, you have no objection to receiving into the record in your hearing here today the testimony of Mr. Grant and Mr. Carter as they gave it yesterday in the D'Arensbourg case?

The Claimant:

Yes.

The Deputy Commissioner:

Is that right?

The Claimant:

Yes, sir, that's what I mean.

The Deputy Commissioner:

You fully understand, Viola, that if you want to, you can refuse or decline to have the testimony of Mr. Carter and Mr. Grant go into the record of your case here today, until you have had a chance to read it, or after you have read it, [fol. 46]you can still refuse or decline to have it made a part of the record in your case here today unless they come down, those two gentlemen come down and testify over again here.

The Claimant:

I understand.

The Deputy Commissioner:

You understand?

The Claimant:

Yes, I understand what you mean.

The Deputy Commissioner:

You have that right to decline to accept their testimony yesterday—

The Claimant:

Yes.

The Deputy Commissioner:

(Continuing)—in your case here today, if you wish, but if you want to you can, as you have previously stated, you can state for the record, which this gentleman here, the Court reporter, is taking down everything that is being said—

The Claimant:

Yes.

The Deputy Commissioner:

You can state for the record, as you have done, I believe, that you are willing for the testimony of Mr. Carter and—that's Mr. Henry Z. Carter, whom, I believe he said he's the [fol. 47] general manager of Avondale Marine Ways—

The Claimant:

Yes, sir.

The Deputy Commissioner:

And Mr. Arthur A. Grant, who is not connected with Avondale Marine Ways, Incorporated, but who, if I recall correctly, is an expert, or in other words, a consultant—consulting engineer and marine surveyor.

They brought Mr. Grant in yesterday in the D'Arensbourg case primarily, if I remember correctly, to state more or less the history of this marine railway used at Avondale Marine Ways at the time of your husband's death, and how it compared with drydocks and how it is used; how the marine railway is used, and for what purpose it is used, and things like that.

The Claimant:

Yes.

The Deputy Commissioner:

As I have told you a moment ago, the testimony of those two gentlemen does not alter or change the fact that your husband's death occurred in the course of his work while cleaning a tank on the barge "Walter Russ", and the barge in which he was working at that time, that means the time of his injury and death, was on the marine railway. The employer, that is the Avondale Marine Ways is contending in this hearing here today, as they did in the D'Arensbourg [fol. 48] case, yesterday, that the injury and death of your husband, as well as of the husband in the D'Arensbourg case, was sustained under circumstances that, as they say, do not bring the injury and death under the Longshoremen's Act, which is the federal law, administered by me in the Seventh Compensation District; but they say, instead, it comes under the state compensation law. That is the primary issue or controversy in both cases. Do you understand?

The Claimant:

Yes, I understand.

The Deputy Commissioner:

Now, you filed a claim for yourself and on behalf of your children, who are the decedent's children—

The Claimant:

Yes.

The Deputy Commissioner:

Mrs. D'Arensbourg did the same thing in respect to herself and her children.

The Claimant:

Yes.

The Deputy Commissioner:

So the employer says we deny that it comes under the Longshoremen's Act, and when they made that denial, that made it necessary to hold a hearing in both cases—

[fol. 49] The Claimant:

Yes.

The Deputy Commissioner:

(Continuing) —in order for me to adjudicate one way or the other—

The Claimant:

Sure.

The Deputy Commissioner:

(Continuing) —the claims which you filed for yourself, and on behalf of your children, and the claims filed by the widow in the D'Arensbourg case on behalf of herself and her children. So we held the hearing in the D'Arensbourg case yesterday, and it was concluded. That hearing was finished yesterday.

The Claimant:

Yes.

The Deputy Commissioner:

So your case comes on for hearing today, and your husband, as I have previously stated, and the D'Arensbourg man, both lost their lives in the same place, at the same time, on the same date, on the same barge, on the same marine railway.

The Claimant:

Yes, sir.

The Deputy Commissioner:

So the testimony given by Mr. Carter and Mr. Grant yesterday, as I have previously told you, irrespective of

other things that they mentioned, does not change the fact [fol. 50] that your husband lost his life while working on the barge "Walter Russ", and the barge at that time was on the cradle of the marine railway, and the cradle was on the tracks of the marine railway, which means that your husband lost his life while working on a barge on the marine railway, and the marine railway on which he was working at that time extended from the land down into the water of the Mississippi River.

Their testimony doesn't change that fact at all.

So that's about the extent that I can tell you with reference to their testimony, the testimony of Mr. Carter and Mr. Grant yesterday. Other details, if you desire to know what they were, may be observed by you, or read by you in the transcript of their testimony as it will appear in the transcript of the testimony of the D'Arensbourg case.

Now, with the explanation that I have given you, I'll ask you again, in order to be sure that you understand what I have tried to explain to you, and understand what you wish to do in the matter, and that is: Are you willing, as you have indicated a moment ago, to have the testimony of Mr. Henry Z. Carter, as he gave it in the D'Arensbourg hearing yesterday made a part of the record in your case here today?

The Claimant:

Well, if it doesn't need to be in there, it's all right.

The Deputy Commissioner:

I can't answer that question. I've told you all that I can tell you. Now, you have previously stated you have no [fol. 51] objection to it, but I want you to thoroughly understand it.

The Claimant:

Yes, I understand.

The Deputy Commissioner:

Are you willing for it to be made a part of the record in your case here today?

The Claimant:

Yes, sir, it's all right.

The Deputy Commissioner:

I beg your pardon?

The Claimant:

Yes, sir, it's all right.

The Deputy Commissioner:

Now, are you willing for the testimony of Mr. Arthur A. Grant, as he gave it yesterday in the D'Arensbourg case, to be made a part of the record in your case here today?

The Claimant:

Yes, sir.

The Deputy Commissioner:

You have no objections to that?

The Claimant:

Yes, sir.

[fol. 52] The Deputy Commissioner:

You have no objection to Mr. Carter's testimony being made a part of the record in your hearing here today?

The Claimant:

Yes, sir.

The Deputy Commissioner:

Is that correct?

The Claimant:

Yes, sir.

The Deputy Commissioner:

Do you fully understand it now?

The Claimant:

Yes, I understand.

The Deputy Commissioner:

You have no objection?

The Claimant:

No objection.

The Deputy Commissioner:

All right.

I understood and do understand that counsel for the defendant yesterday also stated it was agreeable with the defendants for the testimony of Mr. Henry Z. Carter and Mr. Arthur A. Grant, as they gave it yesterday in the D'Arensbourg case, to be made a part of the record in Mrs. [fol. 53] Campbell's case here today, is that correct, Mr. Sims?

Mr. Sims:

That is correct, Mr. Commissioner, and I would like for you to take such steps as are necessary to make it a formal part of the record.

The Deputy Commissioner:

Off the record.

(Discussion off the record.)

The Deputy Commissioner:

On the record.

The following instructions are given to the present Court reporter, Mr. Edward D. Gilbert, of the firm of Vernon Polk & Associates, of New Orleans, Louisiana; Polk & Associates, or Mr. Vernon Polk himself, is the designated official Court reporter in New Orleans on these cases under the Longshoremen's Act, and that Mr. Gilbert is now authorized by the Deputy Commissioner and requested to insert and make a part of the transcript of the testimony of this hearing here today the testimony that was given by

Mr. Henry Z. Carter, and Mr. Arthur A. Grant, for the defendants in the case of Mrs. Enese Coleman D'Arensbourg, widow of Joseph D'Arensbourg, as the same appears in the transcribed notes of the Court reporter who took the hearing yesterday in the D'Arensbourg case.

At the beginning of the testimony of each of those gentlemen, the Court reporter is requested, and directed to make [fol. 54] this statement: "The following testimony of Mr. Henry Z. Carter is a verbatim statement of his testimony which he gave in the Joseph D'Arensbourg case yesterday, November 27, 1951, and is copied hereinbelow from the transcript of the testimony as prepared by the Court reporter who took the hearing in the D'Arensbourg case yesterday."

The present Court reporter will make the same statement immediately preceding the statement which he will make with reference to the testimony of Mr. Arthur A. Grant, who also testified in the D'Arensbourg case yesterday.

When the present Court reporter copies verbatim the testimony of Mr. Henry Z. Carter and Mr. Arthur A. Grant, as the same appears in the transcript of the testimony in the D'Arensbourg case, the testimony thus shown as having been given by Mr. Henry Z. Carter and Mr. Arthur A. Grant shall then become a part of the official record of this hearing here today in the case of Mrs. Viola Campbell and her minor children whose names have previously been stated at this hearing, and such testimony of Mr. Henry Z. Carter and Mr. Arthur A. Grant will then be considered by the Deputy Commissioner to the same extent as if those two gentlemen had been present and testified verbatim to the same extent as they testified yesterday.

Do you understand that, Viola?

The Claimant:

Yes.

[fol. 55] The Deputy Commissioner:

That is agreeable with you?

The Claimant:

Yes.

The Deputy Commissioner:

Is that satisfactory now the way I've stated it, Mr. Sims?

Mr. Sims:

Quite satisfactory, Mr. Commissioner. Yes, sir.

The Deputy Commissioner:

That then will eliminate the necessity of either Mr. Carter or Mr. Grant appearing at this hearing here today and re-testifying over again.

Mr. Sims:

Yes, sir.

(The following testimony of Mr. Henry Z. Carter is a verbatim statement of his testimony which he gave in the Joseph D'Arensbourg case yesterday, November 27, 1951, and is copied hereinbelow from the transcript of the testimony as prepared by the Court reporter who took the hearing in the D'Arensbourg case yesterday:)

[fol. 56] "Henry Z. Carter, was called as a witness for and on behalf of the defendant, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand, and, upon examination, testified as follows:

Examination by the Deputy Commissioner.

By the Deputy Commissioner:

Q. For the record will you state your full name, please?
A. Henry Z. Carter.
Q. And your address?
A. 1215 Pine Street, New Orleans, Louisiana.
Q. Your age?
A. Forty-four.
Q. Your present position, or state with whom you are now employed and in what capacity?
A. I am employed by Avondale Marine Ways, Incorporated, as general manager.

Q. And did you occupy the same position with Avondale Marine Ways, Incorporated, at the time of the decedent's death in this case, which was on July 20, 1951?

A. I did.

The Deputy Commissioner:

Proceed, Mr. Sims.

Direct Examination.

By Mr. Sims:

Q. How long have you been employed as general manager of Avondale Marine Ways, Incorporated?

A. Since March 1, 1949.

[fol. 57] Q. How long have you been employed in any capacity by Avondale?

A. Four and a half years.

Q. Do you have personal knowledge of the explosion aboard the drilling rig "Walter Russ" and the death of the decedent resulting from that explosion?

A. I do.

The Deputy Commissioner:

Off the record.

(Discussion off the record.)

By Mr. Sims:

Q. How many people were killed in that explosion?

A. Two.

Q. Who were they?

A. Joseph D'Arensbourg and Arthur Campbell, Jr.

The Deputy Commissioner:

Mr. Carter, as you know, a claim for compensation has also been filed in the Campbell case.

The Witness:

Yes, sir.

The Deputy Commissioner:

And is scheduled for hearing tomorrow.

The Witness:

Yes.

[fol. 58] The Deputy Commissioner:

And the statements which you may make on the witness stand now, I rather suspect, will be commented upon by counsel for the employer after your testimony for the purpose of making the record show that your testimony here today may be incorporated by agreement of the interested parties in the Campbell case tomorrow.

Mr. Sims:

That is correct, sir.

By Mr. Sims:

Q. What time did you arrive on the scene of the explosion?

A. Approximately fifteen minutes after the actual explosion.

Q. Do you recall the time of day or night of your arrival on the scene?

A. It was approximately 10:15.

The Deputy Commissioner:

When did the explosion occur?

The Witness:

Approximately 10:00 o'clock.

By Mr. Sims:

Q. A.M. or P.M.?

A. P.M., on July 20, 1951.

Q. Where was the drilling barge "Walter Russ" at the time of the explosion, at the time that you arrived upon the scene?

A. The drilling barge, at the time I arrived upon the scene, was resting on our marine railway approximately 350 feet from the water's edge.

[fol. 59] Q. What portion of the marine railway, the barge or the cradle was 350 feet from the water's edge?

A. The rear end of the marine railway cradle was approximately 300 feet from the water's edge, and the drill rig was resting on the cradle approximately 45 feet from the rear end, that is, the cradle extended behind the drill rig approximately 45 feet on the bank, and on the front the drill rig had an overhand on the cradle of approximately ten feet beyond the cradle.

Q. Had there been any change in the position of the cradle or the drilling rig from the time of the explosion until the time of your arrival on the scene?

A. None whatsoever.

Q. Mr. Carter, I show you three photographs which I will ask Mr. Henderson to mark for identification as Avondale 1, 2 and 3.

The Deputy Commissioner:

The said three photographs just mentioned by counsel for the defendant may be marked by the Court reporter for purposes of identification as Exhibits 1, 2 and 3.

Mr. Sims:

I should like for Mrs. D'Arensbourg——

The Deputy Commissioner:

I have just observed the Court reporter has marked on the back of each one of the photographs D-1, D-2, and D-3. That, of course, is for purposes of identification of the said photographs in connection with the testimony of the witness, just so that you might be clear which one you are referring to.

[fol. 60] Now, Mrs. D'Arensbourg, these are three photographs of the marine railway as it existed on the day of the explosion in this case, which counsel for the defendants has had marked for purposes of identification, so that he may ask some further questions about them. You will be given an opportunity to ask anything about said marine railway that you may desire to a little bit later.

Mrs. D'Arensbourg:

All right.

Mr. Sims:

I should like to ask, so it will be part of the record, if there will be any necessity for calling any photographer, the photographer who made these photographs, any such request on the part of Mrs. D' Arensbourg or you?

The Deputy Commissioner:

Off the record.

(Discussion off the record.)

The Deputy Commissioner:

On the record.

Mr. Sims:

The photographs are dated October 10, 1951. I intend to ask Mr. Carter if the photographs of the marine railway actually represent the condition of the railway as of the date of the death in this case.

The Deputy Commissioner:

Suppose you ask him that now.

[fol. 61] By Mr. Sims:

Q. I show you these three photographs marked D-1, D-2, and D-3, and ask you what they portray?

A. They are photographs of our marine railway, both the rails, the rail bed and the cradles.

Q. Do they show the marine railway, the tracks and the cradle and the general installation as it existed on the night of July 20, 1951?

A. Photograph D-3 shows the marine railway approximately 20 feet nearer the river than they were at the time of the explosion on July 20, 1951. I am able to make that statement for the reason that upon arriving at the accident and after seeing if anything could be done with the injured employees, we made a thorough investigation of all the facts

and conditions surrounding the barge, and we stepped off, paced off different distances, and I made my observation from the power line pole, which is directly in the picture in plain view. The marine railway was approximately ten feet above that post at the time of the accident.

The Deputy Commissioner:

With reference to the picture identified as D-3, which side of that picture, namely, the right end of the picture, right end of the photograph or the left end of the photograph, points or is in the direction of the river?

The Witness:

The left end of the photograph is in the direction of the river.

[fol. 62] By Mr. Sims:

Q. And do I understand your statement to be that on the night of the accident, the extreme upper end of the cradle of the marine railway was approximately twenty feet toward the right side of the picture than it is in the present photograph?

A. That's correct.

The Deputy Commissioner:

At this point let me ask, for purposes of further understanding maybe his question, which side of the photograph D-2 points in the direction of the river?

The Witness:

The left side of the photograph.

The Deputy Commissioner:

Which side of the photograph identified as D-1 is in the direction of the river?

The Witness:

The lower right-hand corner is really where it is.

By Mr. Sims:

Q. Have there been any substantial changes or any changes of consequence in the structure or condition of the marine railway since July 20, 1951?

A. None whatever.

Q. Can you state as a fact that the marine railway as it existed July 20, 1951 is as portrayed in these three photographs?

A. That's correct.

[fol. 63] Mr. Sims:

In connection with the testimony of the witness, I offer in evidence the three photographs, the photographs previously marked for identification as D-1, D-2, and D-3.

The Deputy Commissioner:

Mrs. D'Arensbourg, counsel for Avondale Marine Ways, Incorporated, desires to put into evidence and has offered into evidence three photographs which are photographs of the marine railway at Avondale Marine Ways, Incorporated, at Avondale, so-called Avondale, Louisiana, and Mr. Carter, who is now on the witness stand, has stated that these three photographs correctly portray the marine railway as it existed at the time of the injury and death of your husband on July 20, 1951.

Do you have any objection to receiving these photographs into evidence?

Mrs. D'Arensbourg:

No, sir.

The Deputy Commissioner:

I see. I see no objection to receiving them into evidence so far as your side of the case is concerned, and neither do I see any so far as the defendant's side of the case is concerned, but to the contrary, I think they are very helpful to both sides for a clear understanding of the setup or layout of the marine railway as it existed at the time of your husband's death.

[fol. 64] The said photographs identified as D-1, 2 and 3,

which have been offered into evidence by counsel for defendant, are now received into evidence, and the Court reporter is authorized to identify the same as Defendant's Exhibit No. 1 for the one marked D-1, and Defendant's Exhibit No. 2 for the one marked D-2, and Defendant's Exhibit No. 3 for the one marked D-3.

(The documents in question were received in evidence and were marked respectively Defendant's Exhibits 1, 2 and 3, and will be found attached to the back of the original transcript of the proceedings in this case.)

By Mr. Sims:

Q. Mr. Carter, do you know for what purpose and approximately when the railway on which the cradle rests may have been built?

A. I do not have knowledge of when it was built. However, I do know that prior to the construction of the Huey P. Long bridge, it was used as a railroad ferry by the Southern Pacific Railway. It was acquired by Avondale in 1938 and has been used since that time for getting new boats constructed into the water and getting boats out of the water for purposes of repair work.

The Deputy Commissioner:

In your particular case, Mr. Carter, and by that I mean for purposes and use of Avondale Marine Ways, Incorporated, what is this marine railway used for by Avondale?

[fol. 65] The Witness:

It is used for taking new vessels as they are constructed into the water.

The Deputy Commissioner:

You mean by that, putting them on the cradle on this marine railway and lowering the cradle into the water so the vessels can get into the water?

The Witness:

That's right. They are built—we often build vessels over on the side, over on the side of the marine railway, and then

we roll them over onto the marine railway and let them down into the water for launching.

The Deputy Commissioner:

That is one purpose. What other purpose?

The Witness:

The other purpose is to let the marine railway down the track into the water.

The Deputy Commissioner:

You mean the cradle?

The Witness:

Yes, the cradles of the marine railway into the water, and float marine equipment over the marine railway and bring them out of the water.

The Deputy Commissioner:

In other words, it is used for hauling vessels out of the water up to the marine railway, is that right?

[fol. 66] The Witness:

That's correct.

The Deputy Commissioner:

And that may be done for various reasons?

The Witness:

That's correct.

The Deputy Commissioner:

One of which could be and no doubt is frequently done at your place, at Avondale Marine Ways, for the purpose of getting to or having access to the bottom of a boat?

The Witness:

That's correct. We often bring them out of the water on the cradles of the marine railway and roll them over

and rest them on cribbing on the land so we can use the cradles over—of the marine railway to bring other boats up.

The Deputy Commissioner:

At this time or the time of the explosion on July 20, 1951, the barge, drilling rig as it is known, "Walter Russ," was resting on the cradle?

The Witness:

That's correct.

The Deputy Commissioner:

And the cradle on which it was then resting was on the tracks of the marine railway, which marine railway at that time extended directly down from the land into the water [fol. 67] of the Mississippi River, is that correct?

The Witness:

That's correct. The repair work required on the bottom of the "Walter Russ" was of a very short duration and did not require being rolled off of the marine railway for purposes of using it for other work.

The Deputy Commissioner:

But in this—

Mr. Sims:

May I continue with the examination of the witness, Mr. Henderson, and you will have ample opportunity to question——

The Deputy Commissioner:

Very well.

Mr. Sims:

—at a later time.

The Deputy Commissioner:

Very well. I will follow all my other questions immediately after his other testimony without any interruption from counsel for the defendant.

Mr. Sims:

I may have a few objections.

The Deputy Commissioner:

There will be no objections, no interruptions during the time I am questioning the witness, since you have interrupted me in questioning.

[fol. 68] Mr. Sims:

You constantly interrupted me, Mr. Henderson, and I simply asked you——

The Deputy Commissioner:

I have got a right to interrupt you any time I see fit. That is my prerogative; in my endeavor to try to understand the facts in the case.

Mr. Sims:

I agree with you, sir. You certainly do. I made a request if I could continue with the examination of the witness; I didn't make a demand. I think that your remark was a little harsh under the circumstances.

The Deputy Commissioner:

I do not like to be interrupted when I am asking the witness questions, because I have no personal interest in this matter. You are vitally interested, and this widow is. I am going to do everything I think is necessary to try to understand the true facts, and if that entails interrupting you when you are asking questions, to elicit explanations, I must of necessity be forced to do so.

Mr. Sims:

I can understand your position. Please continue with the interruption.

The Deputy Commissioner:

Since you interrupted me when I was asking vital questions to the case, which you may not desire me to do——

[fol. 69] Mr. Sims:

I have no desire to hide anything.

The Deputy Commissioner:

You can go ahead and question the witness. I don't like any thought or feeling on my part that you are antagonistic to my trying to bring out the facts in the case.

Mr. Sims:

Avondale has no desire to hide anything or to hide any facts. They want a complete disclosure of every kind.

The Deputy Commissioner:

I appreciate that. I am sure Avondale is that kind of a corporation.

Mr. Sims:

And counsel feels that same way about it.

The Deputy Commissioner:

Who?

Mr. Sims:

Their counsel today feels the same way about it.

The Deputy Commissioner:

I am awfully glad to know that. I thought that, but I didn't know if you really objected to my bringing out some pertinent points.

Mr. Sims:

Absolutely not. I simply have the examination organized. I thought that most of your questions would be answered,

[fol. 70] and I made the request that you permit me to continue the examination. However, you do govern the hearing.

The Deputy Commissioner:

You interrupted me in my questions, so I will go back and pick up all the questions I have at the expiration of your questioning without any interruptions from you.

Mr. Sims:

Yes, sir.

The Deputy Commissioner:

Proceed.

By Mr. Sims:

Q. Mr. Carter, do the rails of the marine railway above the water level rest on the earth?

A. They rest on the cross-ties which rest on the earth.

Q. Is it possible and is it actually a fact that the barge "Walter Russ" was hauled out in a position where the workmen could walk around on the earth all around the barge and the cradle?

A. That's correct.

Q. Was there any part of the barge or the cradle overhanging the water at the time of the explosion?

A. There was not any part of it overhanging the water. The extreme end towards the river of the marine railway cradle was approximately 300 feet from the water.

Q. Where is the cradle kept when it is not in actual use?

[fol. 71] A. Out of the water on the land, on the marine rails, on the land, of the marine rails.

Q. Now, do I understand from the previous testimony that the railway is used for the purpose of transporting new construction from its place of construction alongside the marine railway to the water?

A. That's correct.

Q. It is used for the purpose of removing vessels which are to be repaired, either on the cradle itself or alongside of the ways of the water?

A. That's correct.

Q. Does it have any other uses?
A. I don't think of any.

Mr. Sims:

That is all. I tender the witness.

Examination by the Deputy Commissioner.

By the Deputy Commissioner:

Q. Mr. Carter—
A. Yes, sir.
Q. —due to the fact that counsel for the defendants interrupted me a few moments ago when I tried to elicit some information in getting a better understanding of your answer to his question, I will now have to go back and duplicate some of the questions previously asked you, and you may have to duplicate some of your answers.
A. Yes, sir.
Q. A fact which I regret.

Mr. Sims:

I regret that the Commissioner took the position that my request was an interruption.

[fol. 72] By the Deputy Commissioner:

Q. Mr. Carter, why was the barge "Walter Russ" hauled out of the Mississippi River by the marine railway at your place of business at Avondale, Louisiana, at the time of the explosion on July 20, 1951?
A. It was hauled out for the purpose of cleaning the tanks and painting its bottom.
Q. The bottom could not, of course, be reached or painted while it was submerged or floating in the river?
A. That's correct.
Q. So, in order to get to the bottom or reach the bottom at the time, the drilling barge was hauled out of the water on July 20, 1951—that is one object, at least, so the bottom could be reached and, as you said, painted?
A. Yes, sir.
Q. At the time of the explosion on said barge on July 20, 1951, was the decedent, Joseph D'Arensbourg, on the barge

which was then on the marine railway at the moment of the explosion?

A. He was inside of one of the tanks of the barge, of the drilling barge.

Q. And at the moment of the explosion he was inside one of the tanks of the drilling barge, and the drilling barge was then at that moment on the tracks of the marine railway that led directly down into the water, is that correct?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir, that's correct.

Q. And what was Joseph D'Arensbourg, the decedent in this case, doing on the barge at the time of the explosion?

A. He was cleaning the tank.

[fol. 73] Q. I take it from that that this drilling barge had probably one or more tanks?

A. That's correct.

Q. Which was comprised of one or more tanks?

A. That's correct.

Q. He was inside one of these tanks cleaning the tank?

A. That's right.

Q. The drilling barge "Walter Russ" at the time of the explosion on July 20, 1951, was I believe you previously stated resting on the cradle of the marine railway, and the cradle was on wheels, and the wheels were on the tracks of the so-called marine railway, and the tracks were fastened to timbers to hold the tracks into place, and the timbers rested on the ground or the earth, is that correct?

A. That's correct.

Q. Mr. Carter, you are testifying now as an official representative of Avondale Marine Ways, Incorporated, are you not?

A. That's correct.

Q. At the time of the explosion which resulted in the death of the decedent in this case, did the employer have immediate knowledge of said injury and death of the decedent, the deceased employee?

A. That's right.

Q. It has been admitted by counsel for the defendant and accepted by the widow in this case that written notice of the decedent's injury and death was not given within 30

days; you have just informed me that the employer, however, had immediate knowledge of the injury and death of the deceased employee, which occurred in this explosion, on said barge, on July 20, 1951?

A. Correct.

[fol. 74] Q. Was the employer prejudiced in any way by failure to give the employer a written notice of said injury and death?

A. No, sir.

Q. Does Avondale Marine Ways, Incorporated, have at their establishment a floating drydock?

A. No, sir, we have a floating drydock, not at this particular location, but at our other plant on the Harvey Canal, which is approximately ten miles from this location.

Q. Does Avondale Marine Ways, Incorporated, at their plant, let's say, at the place known and referred to as Avondale, Louisiana, have a graving drydock?

A. No, sir.

Q. Then, for the purpose of getting a boat out of the water so that the bottom, the underside of the boat might be inspected, repaired, painted or whatnot, you use the marine railway to get the boat out of the water in the same manner as a boat is elevated or gotten out of the water by floating drydock or any other kind of a drydock, by its buoyancy, pulls it out of the water, is that true?

A. No, sir.

Mr. Sims:

Objection to the question, improper, leading, speculative, conjectural.

The Deputy Commissioner:

The objection is entirely overruled.

A. The reasons for bringing it out are—

The Deputy Commissioner:

Answer my question.

A. No, sir.

[fol. 75] By the Deputy Commissioner:

Q. Was it used for the same purpose?

A. It is not the same method.

Q. Was it used for the same purpose?

A. The purpose is the same, but that is not the answer to the question, I don't think. Excuse me if I—

The Deputy Commissioner:

Go back and read the question.

(Record read.)

The Witness:

That is not true; buoyancy does not pull it out of the water. The reasons are the same but the methods are different.

By the Deputy Commissioner:

Q. In other words, the reasons for getting the boat out of the water are the same?

A. That's correct.

Q. But the method is different?

A. That's correct.

Q. The drydock, floating drydock, raises the vessel out of the water by its buoyancy?

A. That's correct.

Q. The graving, the vessel is floated in, we'll say, on a high tide or floated in on full water, the gate is closed, the water pumped out, the vessel rests on supports or something in the bottom of the graving drydock?

A. That's correct.

Q. You had operated neither one of those facilities at your plant?

[fol. 76] A. That's right.

Q. But to accomplish the same purpose, for getting a vessel out of the water, you use what you call marine railway for getting the vessel out of the water?

A. Which is a power—

Q. By means of a cable, as I understand it, a cable attached to some force, electric motor or engine—

A. An engine.

Q. And the other end hooked onto the marine railway?
A. Cradle.
Q. Onto the cradle; with the vessel resting on the cradle, by means of the cable you pull the vessel out of the water up?
A. By the power of the engine, that's correct.
Q. So that you may reach or inspect or do what is necessary to the bottom of the boat, which you couldn't do when the boat was afloat in the water?
A. Yes, sir.

The Deputy Commissioner:

Off the record.

(Discussion off the record.)

The Deputy Commissioner:

On the record.

The Deputy Commissioner has no further questions.

I would like to give Mrs. D'Arensbourg an opportunity to ask Mr. Carter, who is now on the witness stand, any questions that you may wish to ask him in connection with [fol. 77] the explosion or the drilling barge or the marine railway or anything, as it existed at the time of the explosion that killed your husband.
Do you have any questions to ask Mr. Carter?

Mrs. D'Arensbourg:

No, sir, I don't have any questions to ask him.
The Deputy Commissioner:
Any further questions of the witness?

Mr. Sims:

I have one or two, Mr. Henderson.

Re-Direct Examination.

By Mr. Sims:

Q. Is it possible to use floating drydocks to take new construction from the shore to the water?

A. No, sir.

Q. Is it possible to use a graving dock to take floating vessels on shore other than to pump out the graving dock itself?

A. No, sir, you can't move them from the location that they are in when the water is—

Q. So the marine railway serves other purposes than floating drydock or graving docks, is that not correct?

A. That's correct.

Mr. Sims:

That is all.

[fol. 78] Examination by the Deputy Commissioner.

By the Deputy Commissioner:

Q. To meet your needs and your purposes of your establishment, the marine railway is about the only adequate means that you can use in getting vessels in and out of the water of your establishment; isn't that about correct?

A. We also have—

Q. At Avondale?

A. We also have launching ways for taking boats back into the water. We don't—

Q. You lower them in the water in the marine railway; some are put in the water from the so-called launching ways?

A. Yes, sir.

The Deputy Commissioner:

Any further questions of the witness?

Mr. Sims:

No, sir.

The Deputy Commissioner:

Mrs. D'Arensbourg, do you have any questions at all to ask the witness before I excuse him from the witness stand?

Mrs. D'Arensbourg:

No, sir, I don't have any questions.

The Deputy Commissioner:

Mr. Carter, you are excused from the stand. Thank you.

[fol. 79] (The witness thereupon was excused and retired from the witness stand.)

At this moment, let's have a five or ten minute recess.

(Recess.)

The Deputy Commissioner:

The hearing will come to order again, please.

Mr. Sims:

For the record in this case, and also in the companion case of Mrs. Viola Campbell, widow, and minor children, which is coming up for hearing tomorrow, it is agreeable with Avondale Marine Ways, Incorporated, and we hereby offer to use Mr. Carter's testimony in that case, in the Campbell case, since his testimony applies equally to both cases.

The Deputy Commissioner:

The Deputy Commissioner wishes to recall Mr. Carter to the witness stand for one question.

Henry Z. Carter was recalled as a witness for and on behalf of the defendants, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand, and upon examination testified as follows:

The Deputy Commissioner:

I remind you you are still under oath to testify to the truth and nothing but the truth, any questions that may now be asked you.

[fol. 80] The Witness:

Yes, sir.

Examination by the Deputy Commissioner.

By the Deputy Commissioner:

Q. You have just heard the remarks made by Attorney Sims on behalf of Avondale Marine Ways, Incorporated, to the effect that your testimony in the D'Arensbourg case here today shall be used in the hearing scheduled for tomorrow, in the Campbell case?

A. Yes, sir.

Q. I believe Attorney Sims stated that your testimony here today would equally apply to the Campbell case, which is coming up here for hearing tomorrow, is that correct?

A. That's correct.

I would like to state that I testified that D'Arensbourg was in one of the tanks at the time of the explosion. Mr. Campbell was in the same tank, so that will be identical.

Q. That will be an identical situation in both instances?

A. All the way through, yes, sir.

Q. So, as you have previously stated, you are testifying as an official representative of Avondale Marine Ways, Incorporated, and although not in the least—don't misunderstand me—doubting the correctness of your attorney's statement, but for the purpose of further completeness of the record, is it agreeable for Avondale Marine Ways, for your testimony today to be incorporated in the hearing scheduled for tomorrow in the Campbell case?

A. It is.

[fol. 81] Q. Without your being present?

A. It is agreeable.

Q. Or without any official from Avondale Marine Ways being present, unless they desire to be present?

A. It is agreeable.

The Deputy Commissioner:

That is good. Thank you, Mr. Carter.

Do you have any further questions of Mr. Carter?

Mr. Sims:

No, sir.

The Deputy Commissioner:

You are excused.

(The witness thereupon was excused and retired from the witness stand.)"

Certified to be a true and correct copy of this witness' testimony in Case No. 434-177.

Edward D. Gilbert, (Court Reporter).

(The following testimony of Mr. Arthur Grant is a verbatim statement of his testimony which he gave in the Joseph D'Arensbourg case yesterday, November 27, 1951, and is copied hereinbelow from the transcript of the testimony as prepared by the Court reporter who took the hearing in the D'Arensbourg case yesterday:)

[fol. 82] "ARTHUR GRANT was called as a witness for and on behalf of the defendants, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand, and, upon examination, testified as follows:

Examination by the Deputy Commissioner.

By the Deputy Commissioner:

Q. For the record will you state your full name, please?
A. Arthur A. Grant.
Q. And your address?
A. 1215 Exposition Boulevard, New Orleans, Louisiana.
Q. Your age?
A. Sixty-eight.
Q. Were you now connected in any capacity with Avondale Marine Ways, Incorporated on July 20, 1951?
A. No, sir.
Q. What is your professional avocation?
A. I am a mechanical engineer and marine surveyor.

The Deputy Commissioner:

Proceed, Mr. Sims.

Direct Examination.

By Mr. Sims:

Q. Mr. Grant, what is your present address, business address?

A. 1745 Canal Building. That is National Bank of Commerce Building.

[fol. 83] Q. Where did you take your degree of mechanical engineering?

A. Cooper Institute, New York.

Q. When?

A. I think about 1913.

Q. Do you hold any marine engineer's licenses?

A. I have a chief engineer's license unlimited.

Q. Do you hold any state engineer license?

A. I am a licensed mechanical engineer in the State of Louisiana.

Q. In connection with your present occupation of mechanical engineer and marine surveyor, do you have occasion to visit the shipyards and repair yards in this area generally?

A. It is my daily occupation.

Q. Do you have occasion to visit the plant of Avondale Marine Ways, Incorporated, at Avondale?

A. Yes, sir, quite frequently.

Q. How long have you been visiting that plant in pursuit of your occupation?

A. Since it opened.

Q. Do you remember about when it was, roughly?

A. I have just heard Mr. Carter say '38.

Q. So it has been approximately thirteen years?

A. Yes, sir.

Q. I show you three photographs previously introduced in evidence and marked Defendant's 1, Defendant's 2, and Defendant's 3, and ask you if you can tell me what is portrayed in the photographs, referring specifically to Defendant's 1.

A. That shows the cradle of the marine ways.

Q. You recognize the marine ways in that photograph?

A. Yes, sir.

[fol. 84] Q. Do you know anything concerning the history of the railway?

A. This marine——

The Deputy Commissioner:

Just answer his question.

A. Yes, sir.

By Mr. Sims:

Q. Will you state for the record, please, what you know?

A. This marine way is what is left of the Southern Pacific crossing from Harahan to Avondale. When the bridge was built, the Southern Pacific abandoned it. This ramp, incline or ramp, was used to get the cars off the barge or floats that they brought them across the river on. They had a cradle that they used to lower down to meet the end of the barge so as to level it up so the trains would run off from the barge onto the tracks. This cradle, of course, had to be movable, because the river rises and falls about sixteen feet between its high and low stages, and they had to have it so they could elevate it. They pulled it up and lowered it as the river rose or receded. The cars ran off on these tracks and went on about their business at Avondale. The tracks are the same. The equipment that pulled the cradle up is the same, that is, the steam winch is the same, and the cables—they probably have renewed them—are the same type. The cradle has been altered some; the cradle that took the cars off was a triangular shaped thing. This is flat.

[fol. 85] Q. Do you have any personal knowledge of the explosion aboard the barge "Walter Russ" on July 20, 1951?

A. No, sir.

Q. You were not consulted in any way in connection with that?

A. No, sir.

Q. In your visits to the plant of Avondale Marine Ways, Incorporated, have you had occasion to notice the uses to which the marine railway has been employed?

A. Yes, sir.

Q. Will you state what uses you have noted?

A. They use it to pull out boats and then when they have them pulled up, they sometimes roll them off on the side and repair them.

The Deputy Commissioner:

You said "pulled." Where, what?

The Witness:

Pull from the river up onto the barge to the river barge, and then when they are on the river barge, they roll them over on one side, put rollers on them, and rebuild them, demolish them, as they see fit; they also build boats on this river barge and roll them over onto this ways, and then the ways roll them down into the river.

The Deputy Commissioner:

If counsel for the defendant will have no objection to me interrupting this witness' testimony, I would like to ask him the question:

[fol. 86] Isn't it also true that they repair or paint barges on the marine railway itself that leads down into the water, rather than pull them off that marine railway over onto the side and do it?

The Witness:

Yes, sir, they do.

The Deputy Commissioner:

Proceed.

By Mr. Sims:

Q. Have you stated all of the uses which you notice, Mr. Grant? I should like for the record to be complete. If you can recall any additional uses which you have not mentioned, please do so.

A. I think I have covered the ground.

Q. When a vessel is hauled out of the water and remains on the cradle and is being worked on at that time, is it pos-

sible and do the workmen actually walk on the earth all around the cradle and the vessel?

A. They do.

The Deputy Commissioner:

Not necessarily, do they?

The Witness:

If they have to go around the boat, they do.

The Deputy Commissioner:

But he said—is it possible for them to walk around; they can also work on the vessel while it is on the cradle on the tracks of the marine railway, can't they?

[fol. 87] The Witness:

Certainly.

The Deputy Commissioner:

Such as was being done in the explosion that killed the decedent in this case?

The Witness:

Yes.

By Mr. Sims:

Q. Is it true then that no part of the cradle or the vessel overhangs the water at the time that the work is being done?

A. No. When the cradle is pulled up dry, it it considerably beyond the water on the lower end.

Q. Now, Mr. Grant, have you ever had any experience and, if so, state what it has been, at drydock plants or marine railway plants?

A. Oh, I spent fourteen years in the Morse Drydock Company; we had drydocks that took ocean vessels, also two marine railways.

Q. Where was this plant located?

A. Brooklyn, New York.

Q. Will you state the period spent there?

A. From about 1900 to 1914 or '15.

Q. Were you also employed later by Robbins Drydock?

A. Part of that time I was at Robbins Drydock, and they operate graving docks and floating, but no marine railways.

Q. What was the nature of your activity after 1915?

A. From there I went with the Sinclair Oil Company, in charge of their marine equipment, which included building [fol. 88] and maintaining a fleet of tankers; also while there, I designed marine railways for their use at Tampico, Mexico.

Q. How long did you remain with Sinclair?

A. Seven years.

Q. What was your position with them?

A. I was vice-president.

Q. What was your next position after leaving Sinclair?

A. I was general manager of the Jahncke Drydock and Shipbuilding Company at New Orleans. They operated two drydocks.

Q. What type drydocks?

A. Floating docks; they had no marine railways.

Q. When did you state working with Jahncke?

A. About 1920 or '21.

Q. When did you leave Jahncke?

A. 1923.

Q. And what have you done since 1923?

A. I have been marine surveyor and consulting engineer here in New Orleans.

Q. Do you have any official connections with any marine societies?

A. I represent the Bureau Veritas, which is an international classification society for building and maintaining of vessels.

Q. How long have you represented Bureau Veritas in this area?

A. Since 1923.

Q. In connection with your present occupation, I think you stated that you daily went around to the various repair yard-, shipyards, machine shops in New Orleans?

A. Yes, sir, that's right.

[fol. 89] Q. I should like to ask you, based upon your long experience in the field and your intimate knowledge thereof,

if there is any distinction drawn, by men in the shipping—ship repair and harbor enterprises, between a floating drydock and a marine railway?

A. Floating drydock——

Q. Answer the question, please, I asked you.

A. Yes, there is a distinction, yes, sir.

Q. Will you state what the distinction is?

A. Well, a marine railway is really a launching ways in reverse. You build a boat, put ways under it, cut them, let her slide down; this marine railway, you put the boat in, you pull it up, and you have it in the same position or practically that you had the boat before you launched it, and you work on it.

On the drydock, floating drydock, for instance, you have pontoons, and you fill them with water, you lower them down; that lowers it, rather, and you float the ship in, then they pump the pontoons out, and the pontoons have sufficient buoyance to lift the boat themselves, and the ship on top of it.

The comparison of a marine railway, as I see it, and a modern up-to-date dock, is about like a hansom cab to a Greyhound bus, they both carry passengers, but they can't be called the same sort of a thing.

The Deputy Commissioner:

Both accomplish the same purpose?

The Witness:

Yes.

[fol. 90] The Deputy Commissioner:

But in a different way?

The Witness:

Very different way.

The Deputy Commissioner:

One is probably more modern in its method than the other is?

The Witness:

Drydock is the Greyhound bus, and the other is a hansom cab. You couldn't call them both drydocks.

The Deputy Commissioner:

They both serve the same purpose?

The Witness:

They both carry passengers for hire.

The Deputy Commissioner:

But a floating drydock, as you have just referred to, and marine railway, they both serve the same purpose, to the extent of getting a vessel out of the water; one pulls it out of the water up on tracks and the other raises it in the floating drydock, raises it out by means of buoyancy of the drydock after the water is pumped out of its wings or pontoons?

The Witness:

That's right.

By Mr. Sims:

Q. Mr. Grant, is it true that a vessel in a floating drydock is afloat at all times?

A. Yes, sir, the drydock itself is floating.

[fol. 91] The Deputy Commissioner:

His answer is not completely responsive to your question. You asked him, if I remember correctly, isn't it true that a vessel on a floating drydock——

Mr. Sims:

Excuse me. A vessel in a floating drydock is afloat at all times——

May I withdraw that question? May I strike that and get it right?

The Deputy Commissioner:

Yes, strike the whole question. Eliminate it from the record.

By Mr. Sims:

Q. Is it correct that a floating drydock is floating at all times, whether it has a vessel in it or not?

A. Yes, sir, because the dock itself is afloat.

Q. Now, in the shipping business, ship repair business, various harbor enterprises, is a different term used than drydocking when a marine railway will be employed to remove a vessel from the water?

A. Yes, sir.

Q. What is the term in common use?

A. Say you are going to pull it out on the ways; when you put in on the drydock, you say you are going to dock it or drydock it, so to distinguish one from the other.

Q. Mr. Grant, insofar as the marine railway can be employed for completely removing vessels from the water to dry land, it serves a purpose beyond that which a floating drydock or a graving drydock can serve, does it not?

[fol. 92] A. Oh, yes; for instance, the marine railway at Higgins was built just to launch boats. He had a contract to build some 200 boats for the Army; and to launch them. He built them in a house and rolled them down, then rolled them on and built this ways to lower them down; and that, now, is a marine railway that he pulls barges out on, but it was originally—its original intention was to lower the ships or the boats that he was building for the government into the water.

The Deputy Commissioner:

Since you mention Higgins has this facilities, may I ask you if Higgins also uses marine railways for purposes of pulling a boat out of the water for inspection or repairs or what-not?

The Witness:

Yes, he uses that now in reverse of his launching. He puts it down and pulls boats up and lands them, rolls the

mover onto his yard up there and rebuilds, does whatever he wants with them.

The Deputy Commissioner:

Since you mentioned a moment ago the fact that Morse and Robbins, I believe is the name you said, in New York, perhaps in New York City?

The Witness:

Yes.

The Deputy Commissioner:

—also used marine railways; and now, since you mentioned Higgins, which you refer to, I am sure, Higgins Company or whatever it is here in New Orleans——

[fol. 93] The Witness:

Yes.

The Deputy Commissioner:

(Continuing) —also has a marine railway, and since it is now an established fact that Avondale Marine Ways also has a marine railway, may I ask you: It is quite common for concerns or establishments to have marine railways in connection with their work, and that the fact that Avondale Marine Ways happens to have one is not just an isolated occurrence? I mean, they are not the only one that has them; they are used by others in other parts of the city and in other localities around the country. Isn't that true?

The Witness:

Yes, marine railways are common. The one at Avondale is what we call an improvised marine railway from the ramp of the Southern Pacific Railroad, but the marine railways of themselves are common in this industry.

The Deputy Commissioner:

That was my understanding. Proceed, Mr. Sims.

Mr. Sims:

No further questions.

The Deputy Commissioner:

Mrs. D'Arensbourg, do you have any questions that you wish to ask the witness who is now on the witness stand?

Mrs. D'Arensbourg:

No, sir, I don't have any questions.

[fol. 94] The Deputy Commissioner:

No questions by the Deputy Commissioner, so, Mr. Grant, you are excused from the witness stand.

Mr. Sims:

Don't you want to ask him about tomorrow's testimony?

The Deputy Commissioner:

Yes. Before excusing the present witness from the witness stand, I believe Mr. Sims has indicated he wished to ask him one further question.

By Mr. Sims:

Q. Mr. Grant, there is a companion case scheduled for hearing tomorrow in the matter of the claim of Mrs. Viola Campbell on account of the death of Arthur Campbell, Jr., and Avondale Marine Ways, Incorporated would like to state for the record that your testimony is equally applicable to the Campbell case, and would like to ask you if you have any objection to your testimony being used tomorrow in that case, although you personally are not present?

A. No, sir, not at all.

The Deputy Commissioner:

May I ask counsel for the defendant if the defendant has any objection to using Mr. Grant's testimony here today and having his testimony here today incorporated in the hearing in the Campbell case tomorrow?

Mr. Sims:

No, sir, no objection; in fact, we tender it.

[fol. 95] The Deputy Commissioner:

You are excused then, Mr. Grant. Thank you.

(The witness thereupon was excused and retired from the witness stand.)"

Certified to be a true and correct copy of this witness' testimony in Case No. 434-177.

Edward D. Gilbert, Court Reporter.

COLLOQUY BETWEEN COURT AND COUNSEL

The Deputy Commissioner:

At the hearing yesterday, in the D'Arensbourg case, the defendant offered certain photographs of the marine railway layout as it existed at the time of the explosion and death of the decedent in this hearing today, and also as it existed at the time of the death of the decedent in the D'Arensbourg case yesterday. I believe counsel for the defendant has now duplicates of those photographs, and which I think he would like to put into the record in this case, and which I also would like to have them put into the record in this.

You have them now, do you not, Mr. Sims?

Mr. Sims:

Yes, sir. Shall I make the offer?

The Deputy Commissioner:

If you please.

Mr. Sims:

Mr. Commissioner, I should like to offer in connection with the stipulated testimony of Mr. Henry Z. Carter and [fol. 96] Mr. Arthur A. Grant three photographs which were identified yesterday as D-1, D-2, and D-3, and which I now offer in evidence as Defendants' exhibits A, B and C, respectively.

The Deputy Commissioner:

Mrs. Viola Campbell, the photographs which counsel for the defendant has just offered and introduced into evidence in your case here now are photographs, three photographs showing the layout of the marine railway at Avondale Marine Ways, which pictures were taken on October 10, 1951, and which reflect the marine railway tracks, cradles and so forth, used on the marine railway as it existed at the time of your husband's death.

The Claimant:

Yes.

The Deputy Commissioner:

These photographs give you a rather clear picture of the marine railway, and I think are helpful to all parties concerned in better understanding the marine railway layout at the plant of Avondale Marine Ways.

The Claimant:

Yes.

The Deputy Commissioner:

So I know of no way that these photographs can hurt your side of the case. Do you have any objection to me receiving these three photographs into the evidence of your case here today?

[fol. 97] The Claimant:

No, sir.

The Deputy Commissioner:

With that understanding by the widow in this case, the said three photographs are received into evidence and the Court reporter is authorized to identify the same as Defendants' Exhibits A, B and C, respectively, in the order in which they were introduced.

(The documents in question were received in evidence and were marked respectively Defendants' Exhibits, A, B, and C,

and will be found attached to the back of the original transcript of the proceedings in this case.)

The Deputy Commissioner:

Mr. Sims, as attorney for the defendant in this case, do you have any witnesses to testify at this time at this hearing?

Mr. Sims:

No, sir.

The Deputy Commissioner:

Do you have any further evidence of any kind to offer on behalf of the defendant at this hearing at this time?

Mr. Sims:

No, sir.

The Deputy Commissioner:

Does the defendant rest their side of the case at this point?

[fol. 98] Mr. Sims:

The defendant rests, sir.

The Deputy Commissioner:

Mrs. Viola Campbell, it was your contention, or is your contention in this case that you contend your husband's death comes, or was sustained under circumstances coming under the Longshoremen's Act, isn't that correct?

The Claimant:

Yes.

The Deputy Commissioner:

And it is your contention that you and your children are entitled to compensation under the Longshoremen's Act, is that right?

The Claimant:

Yes.

The Deputy Commissioner:

And you deny that the injury and death of your husband comes under the Louisiana State Compensation Law, is that right?

The Claimant:

Yes.

The Deputy Commissioner:

Do you have any further evidence, or anything to offer on behalf of yourself or your minor children in this hearing here today, Mrs. Campbell?

[fol. 99] The Claimant:

No, sir.

The Deputy Commissioner:

Are you willing for your side of the case, and this hearing in its entirety to be closed at this time?

The Claimant:

Yes.

The Deputy Commissioner:

Are you satisfied with the hearing that we've had here this morning in connection with your case?

The Claimant:

Yes, sir.

The Deputy Commissioner:

With those statements by the widow in this case and the defendant having rested his side of the case, I know of nothing further that can be done in connection with either side

of the case, for that matter. Therefore, I declare the hearing concluded at this time, which is 11:55 a. m.

The Deputy Commissioner will render his decision in due course. Thank you very kindly.

(Thereupon the instant hearing was concluded.)

[fol. 100] CLAIMANT'S EXHIBIT 1.

11/28/51.
434-178.
EG.

State of Louisiana,
Parish of St. Charles.

Be It Remembered, that on this 22nd day of May, 1934, by virtue of a written License to me directed by the Honorable the Twenty-Fourth Judicial District Court in and for the Parish of St. Charles, I, the undersigned, W. P. Patterson Justice of the Peace did celebrate the Bonds of Matrimony between Mr. Arthur Campbell, Jr. and Miss Viola Lucas in the presence of certain chosen witnesses, whom, with the married parties, I have caused to sign this instrument in duplicate, at the place and on the date above written, one copy of which is returnable to the said Court, to be filed and recorded therein as evidence of said fact and in compliance with law.

(S) Arthur Campbell, Viola Lucas, Married Parties.
Witnesses: Joseph E. Woods, Arthur Campbell, Sr., Joe Lucas. (S) W. P. Patterson, Judge.

[fol. 101] I hereby certify that the above is a true and correct copy of an original marriage record submitted to this office on August 9, 1951 by Mrs. Viola Campbell.

((Mrs.) Grace L. Ryan), Clerk-Stenographer.

CLAIMANT'S EXHIBIT 2.

11/21/51.
434-178.
EG.

Certificate of Birth.

"Suffer Little Children to come unto me and forbid them not". Matt. Canaan B. C.

Killona, Louisiana.

This is to certify That Velmar Lee Cambell is the child of Mr. & Mrs. Arthur Cambel and Viola Lucas Born in Killona, La. on the 19th day of October, 1934 was blessed Dec. 2nd, 1934 According to the Rules of the Baptist Church by Rev. J. B. Davis.

Sponsors Joseph Woods, Jr., Mary Lee Woods as being on the Roll of this Church.

Date 7/31/1951.

(S) Rev. J. B. Davis, Pastor.

[fol. 102] I hereby certify that the above is a true and correct copy of the original Certificate of Birth presented to this office on August 9, 1951 by Mrs. Viola Campbell.

((Mrs.) Grace L. Ryan), Clerk-Stenographer.

CLAIMANT'S EXHIBIT 3.

11/28/51.
434-178.
EG.

The United States of America.
Department of Commerce.
Bureau of the Census.
Washington.

Notification of Birth Registration.

This certifies that the following Record of Birth is registered and preserved in the office of the State Register of Vital Statistics at New Orleans, La. Name Thelma Campbell, Sex Female, No. 15992, Date of Birth July 28, 1936,

Place of Birth Killona, La. Name of Father Arthur Campbell, Maiden Name of Mother Viola Campbell.

(S.) W. L. Austin, Director of Census, (S.) J. Hans, ml, Special Agent, Bureau of the Census.

[fol. 103] I hereby certify that the above is a true and correct copy of the original Notification of Birth Registration presented to this office on August 9, 1951 by Mrs. Viola Campbell.

((Mrs.) Grace L. Ryan), Clerk-Stenographer.

CLAIMANT'S EXHIBIT 4.

11/28/51.
434-178.
EG.

The United States of America
Department of Commerce
Bureau of the Census
Washington

Notification of Birth Registration.

This certifies that the following Record of Birth is registered and preserved in the office of the State Registrar of Vital Statistics at New Orleans, La. Name Rona May Campbell, Sex Female, No. 22841, Date of Birth May 6, 1938, Place of Birth Killona, Name of Father Arthur Campbell, Maiden Name of Mother Viola Lucas.

(S.) W. L. Austin, Director of the Census, (S.) J. Hans, ml, Special Agent, Bureau of the Census.

[fol. 104] I hereby certify that the above is a true and correct copy of the original Notification of Birth Registration presented to this office on August 9, 1951 by Mrs. Viola Campbell.

((Mrs.) Grace L. Ryan), Clerk-Stenographer.

CLAIMANT'S EXHIBIT 5.

11/28/51.
434-178.
EG.

The United States of America
Department of Commerce
Bureau of the Census
Washington

Notification of Birth Registration

This certifies that the following Record of Birth is registered and preserved in the office of the State Registrar of Vital Statistics at New Orleans, Louisiana. Name Arthur Campbell, Jr., Sex male, No. . . . . Date of Birth November 27, 1939, Place of Birth Killona, St. Charles Parish, La., Name of Father, Arthur Campbell, Name of Mother Viola Lucas.

(S.) W. L. Austin, Director of the Census, (S.) J. Hans, ml, Special Agent, Bureau of the Census.

[fol. 105] I hereby certify that the above is a true and correct copy of the original Notification of Birth Registration presented to this office on August 9, 1951 by Mrs. Viola Campbell.

((Mrs.) Grace L. Ryan), Clerk-Stenographer.

CLAIMANT'S EXHIBIT #6.

11/28/51.
434-178.
EG.

Office of Recorder of Births, Marriages and Deaths.
Parish of Orleans.

Municipal Office Building, Carondelet and Lafayette Streets,

No. 37047.

This is to certify that Roger Campbell (Colored) lawful son of Arthur Campbell and Viola Lucas was born on the

16th day of February 1942, and registered in Book No. 215 Folio 324, on the 25th day of February, 1942.

(S.) W. J. Prudhomme, Deputy Recorder.

[fol. 106] I hereby certify that the above is a true and correct copy of the original birth record presented to this office on August 9, 1951 by Mrs. Viola Campbell.

(Mrs.) Grace L. Ryan, Clerk-Stenographer, W. J. Prudhomme, Deputy Recorder, Births, Marriages and Deaths, Parish of Orleans.

CLAIMANT'S EXHIBIT 7.

11/28/51.
434-178.
EG.

Notification of Birth Registration.

Registrant:

Full name—Campbell, Clarence Rundles.
Sex—Male.
Date of Birth: Month—November. Day—26. Year—1944.

Parents:

Maiden Name of Mother—Lucas, Viola.
Color or Race—Col.
Father's Name—Campbell, Arthur.
Color or Race—Colored.

Place of Birth:

City or Town—Ward—New Orleans.
Parish—Orleans.
State—La.

[fol. 107] Certificate:

Certificate filed No. 228/1712.

Date issued:

Month—November. Day—29. Year—1944.

Issued to—

Viola Campbell, Box 41, Killona, Louisiana.

The United States of America.
Department of Commerce—Bureau of the Census.

This certifies that a record of birth is registered with City of New Orleans, Dept. of Health.

(S.) W. J. Prudhomme, Registrar. John M. Whitney, M. D., City Health Officer and special agent, Bureau of the Census.

I hereby certify that the above is a true and correct copy of the original Notification of Birth Registration presented to this office on August 9, 1951 by Mrs. Viola Campbell.

((Mrs.) Grace L. Ryan), Clerk-Stenographer.

[fol. 108] CLAIMANT'S EXHIBIT 8

11/28/51.
434-178.
EG.

(Seal)

Recorder of Births, Marriages & Deaths
Parish of Orleans

State of Louisiana.

This is to certify Edna Ann Campbell (col.) lawful daughter of Arthur Campbell, Jr., and Viola Lucas was born on the 16th day of August, 1946 and registered No. 237 Folio 472.

(S.) W. J. Prud.

(This corner of certificate torn off eliminating balance of signature).

I hereby certify that the above is a true and correct copy of original record of birth presented to this office on August 9, 1951 by Mrs. Viola Campbell.

((Mrs.) Grace L. Ryan), Clerk-Stenographer.

[fol. 109] CLAIMANT'S EXHIBIT 9

11/28/51
434-178
EG

Sim B. Shattuck, Director
City of New Orleans Health Department
Bureau of Vital Records

Notification of Birth Registration

John M. Whitney, M. D.
Sup't of Public Health

Full Name Lionel Foster Campbell, Color Col, Sex Male, Date of Birth: Month Aug. Day 27. Year 1948, Place of Birth New Orleans, La. Father's Name Arthur Campbell, Maiden Name of Mother Viola Lucas, Certificate File No. 12-506 Date Issued: Month Sept. Day 7, Year 1948.
(Seal)

I hereby certify that the above is a true and correct copy of the original Notification of Birth Registration presented to this office on August 9, 1951 by Mrs. Viola Campbell.
((Mrs.) Grace L. Ryan), Clerk-Stenographer.

[fol. 110] CLAIMANT'S EXHIBIT 10

11/28/51
434-178
EG

City of New Orleans Health Department
Bureau of Vital Records
Notification of Birth Registration
New Orleans, La.

Full Name—Brenda Joyce Campbell.
Date of Birth: Mo.—4. Day—17. Year—1950.
Color or Race—Colored.
Sex—Female.
Place of Birth—New Orleans, La.
Date Issued: Mo.—5 Day—1. Year—1950.

Index No.—157 50 005 912.
Father's Name—Arthur Campbell.
Native of—La.
Maiden Name of Mother—Viola Lucas.
Native of—La.
[fol. 111] Issued to: Mrs. Arthur Campbell, P. O. Box 41, Killona, La.

This is not a certified copy.

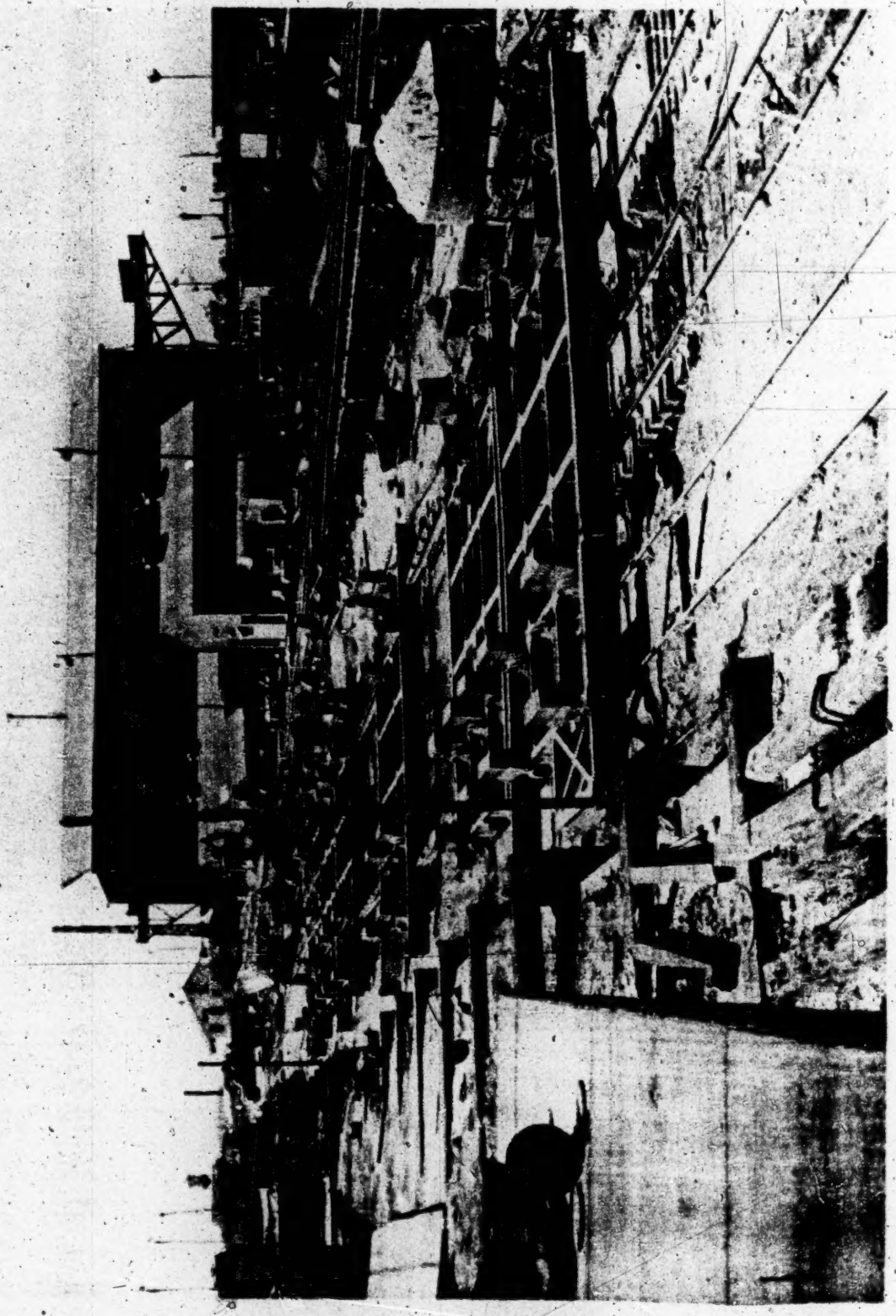
(S.) Naomi M. Drake, Deputy Registrar. (Seal.)

I hereby certify that the above is a true and correct copy of the original Notification of Birth Registration presented to this office on August 9, 1951 by Mrs. Viola Campbell.

((Mrs.) Grace L. Ryan), Clerk-Stenographer.

(Here follows 3 photos, fols 112, 113, 114)

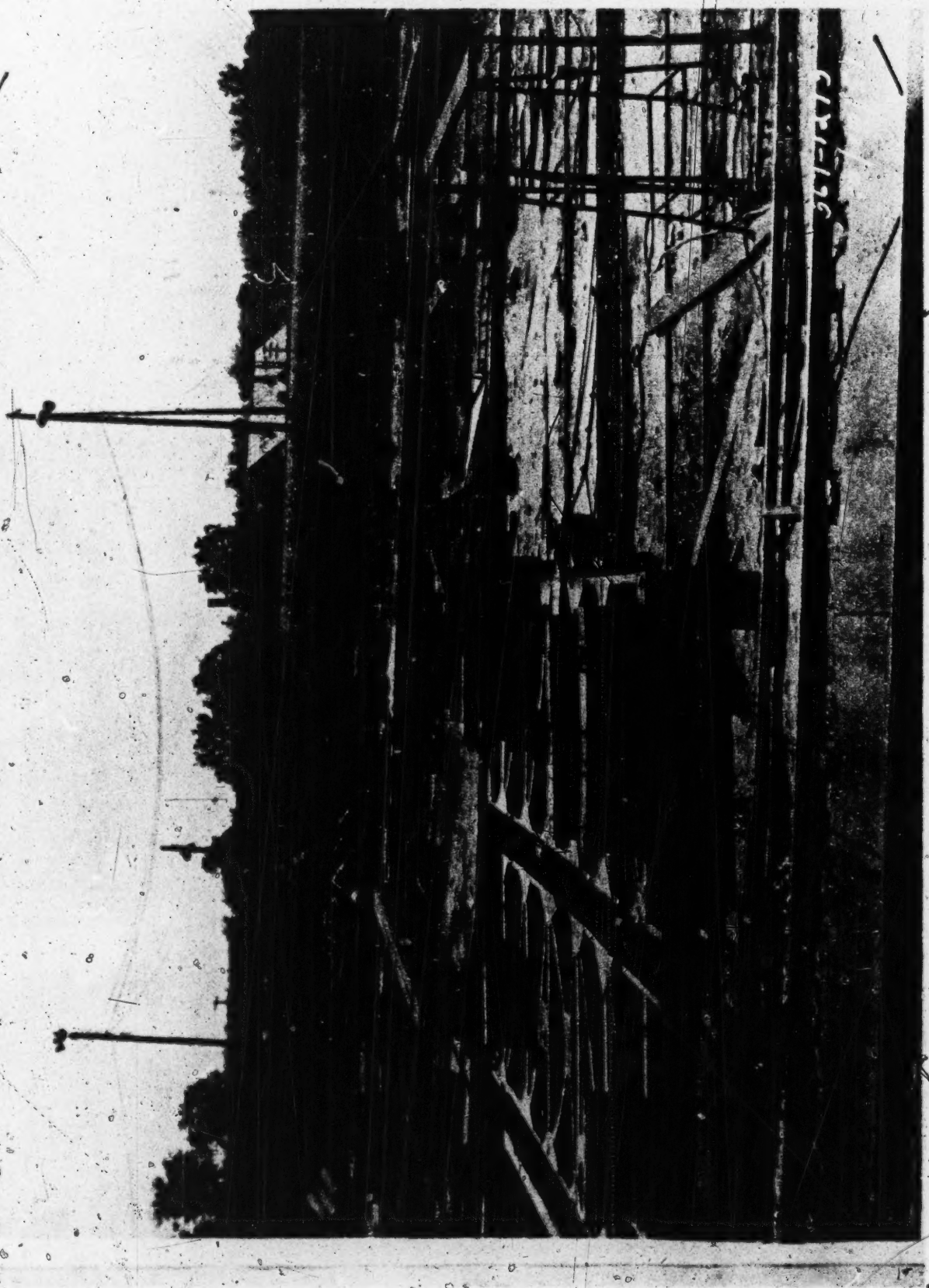
DEFENDANT'S EXHIBIT "A" 84A



DEFENDANT'S EXHIBIT "B" 841

DEFENDANT'S EXHIBIT "C"

846



[fol. 115] IN UNITED STATES DISTRICT COURT

HEARING ON MOTION OF DEFENDANT FOR SUMMARY JUDGMENT, ARGUMENT AND SUBMISSION—February 20th, 1952

This cause came on this day to be heard on motion of defendant for summary judgment;

Present: G. Harrison Scott, Attorney for defendants; John W. Sims, Attorney for plaintiffs;

After hearing argument of counsel for the respective parties, the matter was submitted and the Court took time to consider.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT—February 21st, 1952

This cause came on to be heard on February 20th, 1952 on motion of defendants for summary judgment and was [fol. 116] argued by counsel for the respective parties and submitted when the Court took time to consider;

Now therefore, after due consideration;

It Is Ordered that the motion of defendants for summary judgment be and the same is hereby, Granted, in Nos. 3226 and 3227.

Continental Casualty Company v. Lawson, 64 Fed. (2) 802;

Maryland Casualty Company v. Lawson, 101 Fed. (2) 732.

IN UNITED STATES DISTRICT COURT

JUDGMENT—February 28, 1952

Judge Wright

Considering the order entered by the Court on February 21, 1952, granting the motion of defendants for summary judgment in each of the above entitled cases;

It Is Ordered, Adjudged and Decreed by the Court that judgment be and is hereby entered in each of the above

entitled cases in favor of the defendants and against the plaintiffs, dismissing plaintiff's suits, with costs.
J.S.W.

[fol. 117] In United States District Court

Notice of Appeal—Filed March 14, 1952

Notice is hereby given that Avondale Marine Ways, Inc., plaintiff above named in said action, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Judgment sustaining the Motion for Summary Judgment entered in this action on February 29, 1952.

March 14, 1952.

(S.) John W. Sims, (S.) Ashton Phelps, Attorneys for Avondale Marine Ways, Inc., Tenth Floor United Fruit Building, New Orleans 12, Louisiana. Mendes & Mount, 27 William Street, New York 5, New York and Phelps, Dunbar, Marks & Claveria, Tenth Floor United Fruit Building, New Orleans 12, Louisiana, Of Counsel.

[fols. 118-120] Bond on appeal for $250.00 approved and filed March 14, 1952 omitted in printing.

[fols. 121-122] Designation of record on appeal and certificate of service (omitted in printing.)

[fol. 123] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 124] Argument and Submission—January 13, 1953 (omitted in printing.)

[fol. 125] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14055

AVONDALE MARINE WAYS, INC., Appellant,

versus

JOSEPH H. HENDERSON, Deputy Commissioner, et al., Appellees

No. 14056

AVONDALE MARINE WAYS, INC., Appellant,

versus

JOSEPH H. HENDERSON, Deputy Commissioner, et al., Appellees

Appeals from the United States District Court for the Eastern District of Louisiana

OPINION—Filed January 29, 1953

Before HUTCHESON, Chief Judge, and STRUM and RIVES, Circuit Judges

HUTCHESON, Chief Judge: Filed under the provisions of the Longshoremen's Act of March 4, 1927,[1] these suits were brought to enjoin and set aside as not in accordance with law, compensation orders issued by the deputy commissioner in favor of the dependents of two of appellant's employees who had been killed in an explosion[2] on a barge upon which they were working.

[fol. 126] The claim of appellant was that the place where,

[1] 44 Stat. 1424, 33 U. S. C. A., Sec. 901 et seq.

[2] By stipulation or by uncontroverted testimony, it was established that, at the time of the explosion the barge had been hauled out of the Mississippi River on the cradle of a marine railway, and that both cradle and barge at the time of the explosion and for some time previously thereto had been at rest ashore at a point some 400 feet from the water.

and the circumstances under which, the injuries occurred are such that the Louisiana State Compensation Act furnished the exclusive remedy; that the Longshoremen's and Harbor Workers' Compensation Act was therefore inapplicable; and that the deputy commissioner was without jurisdiction or authority to make an award. In short, its position was that the language, "navigable waters of the United States, including any dry dock," as those words are used in Sec. 3(a) of the Act, 33 U. S. C. A. 903(a) does not extend to and include the marine railway.

The commissioner, as vigorously contending that a marine railway is a dry dock within the meaning of the Act, filed a motion for summary judgment.

The district judge, on the authority of two cases decided by this court, *Continental Casualty Company* v. *Lawson*, 64 F (2) 802, and *Maryland Casualty Co.* v. *Lawson*, 101 F (2) 732, granted the motion and entered judgments dismissing the suits with costs.

Here seeking their reversal, appellant concedes that the decisions of this court, on which the district judge, relies, do support the judgments. It insists, however, that these cases were wrongly decided; that they have been in effect overruled by later decisions of the Supreme Court; and that this court should now disavow them.

We cannot agree with these views. Quite to the contrary, we are of the clear opinion that the cases were when decided well decided; that no case since decided furnishes any sound basis for a different view; and that many cases which have been decided since[1] have given the questioned decisions full support and approval.

The judgments appealed from were rightly entered. They are affirmed.

[fol. 127] Rivers, Circuit Judge, dissenting:

This accident occurred over dry land some four hundred feet from the water's edge. That part of the marine rail-

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[1] DeBardeleben Coal Corp v. Henderson, 142 F(2) 481; Newport News Shipbuilding & Dry Dock Co. v. O'Hearne, 192 F(2) 968; Massachusetts Bonding & Insurance Co. v. Lawson, 149 F(2) 853; Western Boat Bldg. Co. v. O'Leary, 198 F(2) 409.

way on which the ship rested differed from a dry dock in the respect upon which the Longshoremen's Act turns in that it was not in or over navigable waters. The Jones Act is amphibious. *O'Donnell* vs. *Great Lakes Dredge and Dock Co.*, 318 U. S. 36, 42. The Longshoremen's Act, on the other hand, is restricted to compensation for injuries occurring on navigable waters. *Swanson* vs. *Marra Bros.*, 328 U. S. 1. We have here the reverse of the situation presented in *Nogueira* vs. *N. Y., N. H. & H. R. Co.*, 281 U. S. 128, and *Pennsylvania R. Co.* vs. *O'Rourke*, Supreme Court of U. S., January 12, 1953, No. 60—October Term, 1952, in which it was held that the extension of a railroad on to a boat in navigable waters did not carry with it the Federal Employer's Liability Act. Here it seems to me that the extension of the marine railway to a point some 400 feet ashore did not carry with it the Longshoremen's Act. The case of *Pennsylvania R. Co.* vs. *O'Rourke*, *supra*, makes plain that the Act "is directed at the employer when it speaks of maritime employment, not at the work the employee is doing." As in the case of a longshoreman injured on a dock while engaged in unloading a vessel (*State Industrial Commission* vs. *Nordenholt Corporation*, 259 U. S. 263), the simple distinction that must be maintained, I think, is between injuries on land and those suffered upon navigable waters.

Further, "Congress made clear its purpose to permit state compensation protection whenever possible." *Davis* vs. *Department of Labor and Industries*, 317 U. S. 249, 252, 253; see *Parker* vs. *Motor Boat Sales*, 314 U. S. 244, 249, 250. Ashore is the natural habitat of the State compensation acts, and it seems to me that the Longshoremen's Act cannot survive on land. I, therefore, respectfully dissent.

[fol. 128] IN UNITED STATES COURT OF APPEALS

No. 14055

AVONDALE MARINE WAYS, INC.,

versus

JOSEPH H. HENDERSON, Deputy Commissioner, et al.

JUDGMENT—January 29, 1953

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Avondale Marine Ways, Inc., and the surety on the appeal bond herein, Seaboard Surety Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Per Rives, Circuit Judge, dissents."

[fol. 129] IN THE UNITED STATES COURT OF APPEALS

[Title omitted]

STIPULATION—Filed April 9, 1953

Inasmuch as the above cases present the same questions of law, and similar questions of fact, and were consolidated for hearing before the United States District Court and disposed of by the District Court in one opinion; and inasmuch as they were again consolidated for briefing and hearing in this Court, the record in the case of Avondale Marine Ways, Inc., vs. Joseph H. Henderson, Deputy Commissioner, et al., Circuit Court of Appeal Docket No. 14055, alone being printed, this Court rendering one opinion in the two cases:

It is stipulated and agreed by and between the parties hereto, by and through their undersigned attorneys of

record, that the certified transcript of the record in only one case, that of Avondale Marine Ways, Inc., vs. Joseph Henderson, Deputy Commissioner, et al., Circuit Court of Appeal Docket No. 14055, be submitted to the United States Supreme Court on any petition for certiorari, and it is further stipulated and agreed by and between the parties [fols. 130-131] hereto that the case of Avondale Marine Ways, Inc., vs. Joseph H. Henderson, Deputy Commissioner, et al., Circuit Court of Appeal Docket No. 14056 abide and follow the decision of the United States Supreme Court in the case of Avondale Marine Ways, Inc. vs. Joseph H. Henderson, Deputy Commissioner, et al., Circuit Court of Appeal Docket No. 14055.

(S.) John W. Sims, Counsel for Avondale Marine Ways, Inc., Appellant. (S.) G. Harrison Scott, Counsel for Joseph H. Henderson, Deputy Commissioner, et al., Appellees.

ORDER

It is ordered by the Court that the foregoing stipulation be approved and filed, and it is further ordered that the case of Avondale Marine Ways, Inc. vs. Joseph H. Henderson, Deputy Commissioner, et al., Circuit Court of Appeal Docket No. 14056, abide and follow the decision of the United States Supreme Court in the case of Avondale Marine Ways, Inc., vs. Joseph H. Henderson, Deputy Commissioner, et al., Circuit Court of Appeal Docket No. 14055.

(S.) J. C. Hutcheson, Jr., Judge, United States Court of Appeals for the Fifth Circuit. April 9th, 1953.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 132] SUPREME COURT OF THE UNITED STATES—October Term, 1952

No. 744

AVONDALE MARINE WAYS, INC., Petitioner

vs.

JOSEPH H. HENDERSON, DEPUTY COMMISSIONER, ET AL.

ORDER ALLOWING CERTIORARI—Filed June 8, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.